TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922

No. 270

JOHN BARTON PAYNE, DIRECTOR GENERAL OF RAILROADS, AS AGENT, &c., PLAINTIFF IN ERROR,

vs.

FARMERS CO-OPERATIVE EQUITY COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED FEBRUARY 11, 1922.

(28,704)

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OCTOBER TERM, 1921.

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vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

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STATE OF MINNESOTA:

In Supreme Court.

STATE OF MINNESOTA,
County of Hennepin:

Municipal Court, City of Minneapolis.

FARMERS CO-OPERATIVE EQUITY COMPANY, Plaintiff,

vs.

WALKER D. HINES, as Agent Designated by the President under the Transportation Act of 1920, Defendant.

Summons.

The State of Minnesota to the above-named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, which complaint is hereto annexed and herewith served upon you and to serve a copy of your answer to the said complaint on the subscriber at his office, 354 Security Building, Minneapolis, Minnesota, County of Hennepin within ten days after service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you in the sum of Thirty and 90/100 ($30.90) Dollars, with interest thereon at the rate of six per cent per annum since the 25th day of August, 1919, together with plaintiff's costs and disbursements herein.

ALEX. KANTER,
Attorney for Plaintiff.

354 Security Building, Minneapolis, Minnesota.

(Title of Cause.)

Complaint.

Plaintiff for his cause of action against this defendant complains and alleges:

I.

That on the 21st day of March, 1918, the Congress of the United States of America passed an act authorizing the President of the United States to take possession and assume control of all systems of transportation and the appurtenances thereof, in the said United States, and that by proclamation dated December 20th, 1917, and

April 11th, 1918, the President of the United States did take possession and assume control of all the systems of transportation and appurtenances thereof including the Atchison, Topeka and Santa Fe Railroad Company. That on the 20th of February, 1920, the Congress of the United States of America passed an act terminating federal control of all systems of transportation and the appurtenances thereof and authorizing the President of the United States to designate an agent against whom suits in equity and actions at law based on causes of actions arising out of possession of and operation by the President of the railroad or systems of transportation of any carrier, might be brought, and that pursuant to the authority vested in him by the Congress of the United States of America, the President of the United States has heretofore, appointed, designated and named John Barton Payne, as the proper agent against whom said actions may be instituted, and that the said John Barton Payne is the proper party to be named as defendant in this action.

II.

That during all times hereinafter mentioned, the Atchison Topeka and Santa Fe Railway Company was a common carrier of freight and passengers engaged in state and interstate commerce and was then and there under the operation and control of the director general of railroads.

III.

That at said station of Isabel, Kansas, on the 25th day of August, 1919, the plaintiff delivered to the Atchison Topeka and Santa Fe Railway as such common carrier, then and there under the operation and control of the director general of railroads, one certain carload of wheat, the property of this plaintiff, consisting of Eighty-five Thousand Two Hundred (85,200) pounds thereof loaded and contained in Atchison Topeka and Santa Fe car 15493 billed and consigned for transportation over the line of the Atchison, Topeka & Santa Fe Railway and succeeding lines to Hutchinson, Kansas, there to be delivered to the order of the plaintiff or the authorized agent of the plaintiff.

IV.

That the Atchison Topeka and Santa Fe Railway then and there to-wit under the authority of the director general of railroads at said Isabel, Kansas, on the 25th day of August, 1919, as such common carrier received and accepted said carload of wheat so billed and consigned for transportation as aforesaid, and for a valuable consideration thereof to be paid, executed, issued and delivered to the plaintiff for the use and benefits of this plaintiff, its certain through bill of lading, shipping receipt or contract providing for the transportation of said carload of wheat over its said line of railroad and connecting lines to Hutchinson, Kansas whereby the director general of

railroads became liable to this plaintiff for any and all losses or damage which might be negligently caused to said plaintiff by the Atchison Topeka and Santa Fe Railway then under the operation and control of the director general of any or all the said connecting lines while the said wheat was in the course of transportation.

V.

That the Atchison, Topeka and Santa Fe Railway under the operation and control of the general director of railroads did not transport said wheat carefully or with due and diligent care, but on the contrary so wrongfully, carelessly and negligently conducted themselves, that eleven thousand (11,000) pounds of wheat while in their possession and under their control as such common carrier, became lost and only delivered eighty-four thousand one hundred (84,100) pounds of said wheat to the damage to this plaintiff in the sum of thirty and 90/100 ($30.90) dollars; that this plaintiff is the owner of and lawful holder of the said bill of lading and as such brings this action.

Wherefore, plaintiff prays for judgment against this defendant for the sum of thirty and 90/100 ($30.90) dollars with interest thereon according to law, together with the costs and disbursements of this action.

ALEX KANTER,
Attorney for Plaintiff.

354 Security Building, Minneapolis, Minnesota.

(Title of Cause.)

Notice of Motion.

To the above-named plaintiff and to Alex Kanter, its attorney:

You will please take notice that on the 15th day of June, 1920, at 2 P. M., or as soon thereafter as counsel can be heard, this defendant appearing specially and for the purpose of this motion only, will move the above named court at a special term thereof, to be held on the above date, at the Court House and City Hall in the City of Minneapolis, in said county and state, for an order quashing, vacating and setting aside the service of the summons and complaint in said action upon the following grounds:

I.

That the Atchison, Topeka & Santa Fe Railway Company at the time of the service of the summons and complaint herein was a railway corporation organized and existing under and by virtue of the laws of the State of Kansas and owning and operating a line of railway in said state of Kansas and other states; but that said

Railway Company does not own or operate and never has owned or operated any line of railroad within the State of Minnesota; and does not do and never has done any business within said state except the solicitation of interstate freight and passenger traffic to be transported over its line without said State of Minnesota; and that
7 this defendant did not at any time operate any lines of the Atchison, Topeka and Santa Fe Railway Company within the State of Minnesota.

II.

That E. L. Jansen upon whom the pretended service of the summons and complaint was made April 7th, 1920, was not then and is not now a ticket or freight agent of defendant or of the Atchison, Topeka & Santa Fe Railway Company, save and except that said E. L. Jansen was and is engaged in the solicitation of freight and passenger traffic for transportation over the lines of the Atchison, Topeka & Santa Fe Railway Company without said state in interstate commerce.

III.

That Chapter 218, Laws of Minnesota, 1913 (General Statutes 1913, paragraph 7735), under which the pretended service was made.

(*a*) Is void as being in contravention of Article I, Paragraph VII, Constitution of Minnesota.

(*b*) Is void as being in contravention of Subdivision III, Section VIII, Article I, of the Constitution of the United States.

(*c*) Is void as being in contravention of Paragraph I, Article XIV, Amendments to the Constitution of the United States.

8 Said motion will be made upon the annexed special appearance and affidavits and upon all the files and records herein.

FARICY, McMEEKIN & QUINN,
Attorneys Appearing Specially for Defendant.

805-7 Commerce Building, St. Paul, Minnesota.

(Title of Couse.)

Special Appearance.

The above named defendant for the sole purpose of objecting to the jurisdiction of this court and for no other purpose does make a special appearance herein and does aver that this Honorable Court has no jurisdiction of the person of this defendant.

In this behalf defendant avers that on the 7th day of April, 1920, at Minneapolis, Minnesota, a pretended service of the summons and complaint herein was made by handing to and leaving with one E. L. Jansen copies thereof. Except as above stated, no service of the

summons and complaint herein or any other process has been made upon this defendant. Said pretended service was and is wholly null, void and ineffectual.

This defendant, Walker D. Hines, on said 7th day of April, 1920, was and now is the agent designated by the President of the
9 United States, under Section 206 (*a*) of an Act of Congress, approved February 28th, 1920, entitled, "An Act to provide for the termination of Federal Control of Railroads and Systems of Transportation; to provide for the settlement of disputes between carriers and their employees; to further amend an act entitled 'An Act to Regulate Commerce,' approved February 4th, 1887, as amended, and for other purposes," which Act of Congress is commonly known as the "Transportation Act, 1920;" that defendant as such agent is the proper party defendant in actions arising out of the federal operation of the railroad of the Atchison, Topeka & Santa Fe Railway Company; that the causes of action, if any, on which this suit is based, arose out of such federal operation of the Atchison, Topeka & Santa Fe Railroad as more particularly appears from the summons and complaint herein.

Defendant further avers that the manner of service of process upon him is prescribed in Section 206 (*b*) of said Transportation Act of 1920, and provides in substance that process may be served upon any agent or officer of the carrier operating such railroad or system of transportation, if such agent or officer is authorized by law to be served with process in proceedings brought against such carrier.

Defendant further avers that said E. L. Jansen was not on said 7th day of April, 1920, or at any other time, a ticket or freight agent of said defendant or of the said Atchison, Topeka & Santa
10 Fe Railway Company, save and except that said E. L. Jansen was and is engaged in the solicitation of interstate freight and passenger traffic, moving on the lines of said Atchison, Topeka & Santa Fe Railway Company, wholly outside this state, that said E. L. Jansen never at any time solicited freight or passenger traffic for this defendant's operation of the line of railroad of said Atchison, Topeka & Santa Fe Railway Company.

Defendant further avers that the pretended service herein was made under Chapter 218, Laws of Minnesota, 1913 (General Statutes 1913, paragraph 7735), which defendant respectfully avers:

(1) Is void as being in contravention of Article 1, Paragraph VII, Constitution of Minnesota.

(2) Is void as being in contravention of Subdivision 3, Section VIII, Article 1, of the Constitution of the United States.

(3) Is void as being in contravention of Paragraph 1, Article XIV, Amendments to the Constitution of the United States.

Wherefore, this defendant appearing specially and not otherwise, prays this Honorable Court that the pretended service of the summons and complaint herein be adjudged null and void and vacated

and set aside and that this Court adjudge that it has no jurisdiction over the person of this defendant.

FARICY, McMEEKIN & QUINN,
Attorneys Appearing Specially for Defendant.

805-7 Commerce Building, St. Paul, Minnesota.

11 STATE OF MINNESOTA,
County of Ramsey, ss:

William T. Faricy, being first duly sworn, deposes and says that he is one of the attorneys for the defendant, appearing specially in the above entitled action; that he has read the foregoing special appearance and knows the contents thereof; that the same is true to the best of his knowledge, information and belief; that the reason this verification is not made by the defendant is that said defendant is without the State of Minnesota, wherein resides affiant.

WILLIAM T. FARICY.

Subscribed and sworn to before me this 3rd day of June, 1920.
[SEAL.] JOHN P. KENNEDY,
Notary Public, Ramsey County, Minn.

My commission expires Aug. 24, 1921.

(Title of Cause.)

Affidavit.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. L. Jansen, being first duly sworn, deposes and says that he makes this affidavit for the purpose of setting aside the pretended service of the summons and complaint in the above entitled action, which were handed to him by some persons unknown to him at Minneapolis Minnesota, April 7th, 1920.

12 That he is employed by the Atchison, Topeka & Santa Fe Railway Company as general agent of its freight and passenger departments for the State of Minnesota and contiguous territory; that said Atchison, Topeka & Santa Fe Railway Company does not own or operate and never has owned or operated any line of railroad within the State of Minnesota, and does not do and never has done any business within said state except the solicitation of interstate freight and passenger traffic to be transported over the line of said Atchison, Topeka & Santa Fe Railway Company without said State of Minnesota.

Affiant further says that he has no authority to accept service of summons herein or to represent the said Atchison, Topeka & Santa Fe Railway Company or the defendant Walker D. Hines herein, in any way in any litigation against the said Atchison, Topeka & Santa Fe Railway Company or said defendant Walker D. Hines in said state, but was authorized solely and only to solicit and procure

freight and passengers for transportation over the lines of said Atchison, Topeka & Santa Fe Railway Company without said state in interstate commerce.

Affiant further says that his duties in the soliciting of freight include the receiving of orders from shippers for the changing and diverting of shipments in transit over the lines of said Atchison, Topeka & Santa Fe Railway Company, which orders he transmits to the proper operating officials of said Atchison, Topeka, & Santa Fe Railway Company outside the State of Minnesota, who thereupon comply with the same; and that in such cases, for the convenience of shippers who have received bills of lading from other lines for through shipments of goods to be transported for a part of the journey over the lines of the said Atchison, Topeka & Santa Fe Railway Company without said State of Minnesota, he gives in exchange therefor bills of lading over the lines of the said Atchison, Topeka & Santa Fe Railway Company, which as expressly provided in said bills of lading, are not in force until the freight is received by the said Atchison, Topeka & Santa Fe Railway Company.

That affiant's duties include the quoting of rates to prospective customers, which rates are those established by the published tariffs on file with the Interstate Commerce Commission, and the procuring from the proper officials of said Railway Company, at the request of shippers or consignees or owners of shipments received for transportation over its lines without this state, of information as to the location of the shipments so transported by said company, and transmitting such information to said shippers, consignees or owners.

Affiant further says that he did not solicit or request the plaintiff herein to route or ship any of the various shipments, for loss and damage to which this action is brought, over the line of said Atchison, Topeka & Santa Fe Railway Company, and did not at any time represent this defendant Walker D. Hines during federal operation of said Atchison, Topeka & Santa Fe Railway Company in the solicitation of freight and passenger traffic or otherwise.

Affiant further says that the shipment for loss and damage to which this action is brought did not move from, into or through the State of Minnesota, but on the contrary, moved wholly outside said State of Minnesota.

Affiant further says that this affidavit contains a full and complete statement of the duties of affiant as general agent of said Atchison, Topeka & Santa Fe Railway Company at Minneapolis, Minnesota.

E. L. JANSEN.

Subscribed and sworn to before me this 3rd day of June, 1920.

[SEAL.] WILLIAM T. FARICY,
Notary Public, Ramsey Co., Minn.

My commission expires April 15, 1921.

(Title of Cause.)

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action through their respective attorneys, that the attached affidavit may be filed with and considered a part of the motion papers heretofore served and filed in defendant's special appearance and motion to set aside the service of the summons and complaint herein.

15 It is further stipulated that if plaintiff desires to file any additional affidavits, he may do so, attaching the same to his affidavits heretofore served and filed, and submit them with his brief herein.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN & QUINN,
Attorneys for Defendant.

(Title of Cause.)

Affidavit.

STATE OF MINNESOTA,
County of Ramsey:

William T. Faricy, being first duly sworn, deposes and says that he is a practicing lawyer at the City of St. Paul, Minnesota, and is a member of the firm of Faricy, McMeekin & Quinn; that he and his firm are the attorneys in Minnesota for Walker D. Hines, as agent designated by the President under "Transportation Act, 1920" in cases brought in Minnesota against said Hines, arising out of the federal control and operation of the lines of railroad belonging to the Atchison, Topeka & Santa Fe Railway Company.

That since the opening of the office of E. L. Jansen, as soliciting freight and passenger agent of said Atchison, Topeka & Santa Fe Railway Company at Minneapolis, Minnesota, in March, 1920, there have been commenced by services of summons upon said Jansen, and are in affiant's office for purposes of defense, eleven (11) suits against said Walker D. Hines as agent designated by the

16 President under "Transportation Act, 1920," arising out of federal control and operation of the lines of railway of said Atchison, Topeka & Santa Fe Railway Company, and that several of said cases each contain a number of causes of action arising out of many different shipments; that forty-nine (49) shipments are involved in said cases and that practically all of said shipments did not move into or through Minnesota, and that in practically all of said cases the plaintiffs are not and never have been residents of the State of Minnesota.

That in order to defend said cases on the merits it will be necessary for the employees and train crews of said Atchison, Topeka &

Santa Fe Railway Company, engaged in interstate commerce who handled each of the forty-nine (49) shipments referred to above, to be absent from their work and to attend the trials of the above mentioned actions at Minneapolis, Minnesota; that traveling to and from Minneapolis and waiting for said cases and each of them to be called for trial, will necessitate the absence of said employees from their work for a number of days above and beyond the time which would be necessary if said actions and each of them were or had been brought in the localities in which the cause of action, if any, pleaded therein arose.

WILLIAM T. FARICY.

Subscribed and sworn to before me this 22nd day of June, 1920.

[SEAL.] THOMAS F. QUINN,
Notary Public, Ramsey County, Minn.

My commission expires April 17, 1922.

17 (Title of Cause.)

Order Denying Motion.

The above entitled cause came on before the undersigned, one of the judges of said Court, in chambers, on the 15th day of June, 1920, upon the motion of the defendant for an order to vacate and set aside the service of the summons in said above entitled action on the ground that the court has no jurisdiction of the defendant. Messrs. Faricy, McMeekin & Quinn appeared specially in support of said motion, and Mr. Alex. Kanter appeared for plaintiff in opposition thereto.

And the Court having heard the arguments of the respective parties, and duly considered the same,

It is ordered, that said motion be, and the same is hereby, in all things, denied.

Dated August 25, 1920.

By the Court: C. L. SMITH,
Judge.

A stay of 20 days is ordered from the filing of this order.

Memorandum.

The question involved on this motion is clearly presented as to the question of facts and as to the law.

It is conceded by counsel for both parties that the ruling of the Supreme Court of the United States on this question is con-
18 clusive, and if there is any conflict in the holding of the Supreme Court of the State of Minnesota and the Supreme Court of the United States, then the ruling of the latter is controlling.

It is also conceded by both parties that the ruling in the case of Armstrong Company v. New York Central & Hudson River Railroad Co., 129 Minn. 104, is adverse to the contention of the defendant in this motion.

However, it is the contention of the defendant that the holding of the United States Supreme Court in Philadelphia & Reading Railway Company v. McKibbin, 243 U. S. 264, which decision is of later date than the Armstrong case, holds to the contra, and overrules the former decision of the United States Supreme Court upon which the Armstrong case is founded.

The single question of law involved in these cases as presented in this motion is: "What constitutes doing business in this state?" Nowhere in the McKibbin case does the United States Supreme Court affirmatively state that it overrules its former decision. And as our state Supreme Court considered and construed in the Armstrong case similar language to that of the United States Supreme Court in the McKibbin case and held that the state court had jurisdiction it would be both unwise and presumptious for an inferior court to construe the language of the United States Supreme Court to the contrary. Moreover, in the McKibbin case there was no
19 such statute involved as Chap. 218, of Laws of 1913 of Minnesota, and a careful reading of the Armstrong case shows that it is an important factor in the conclusion of the court in that case. Let this memorandum be a part of the foregoing order.

(Title of Cause.)

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action, through their respective attorneys, that the title to said action may be and hereby is amended, so as to provide for the following as defendant: "John Barton Payne, as agent designated by the President under Transportation Act, 1920."

This stipulation shall not be construed as a waiver of defendant's right to contest the jurisdiction of this Court over the person of the defendant nor as a general appearance.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN & QUINN,
Attorneys for Defendant.

Dated this 15th day of September, 1920.

20 (Title of Cause.)

Answer.

The above named defendant, after the overruling of his motion to set aside service of the summons and complaint in this action and following his special appearance, and without waiving his right

to further contest the jurisdiction of this Honorable Court over his person, either in this or appellate courts, for his answer to the complaint of the plaintiff herein:

I.

Alleges that Walker D. Hines, the predecessor of this defendant on the 7th day of April, 1920, the date on which the pretended service of the summons and complaint herein was made, was the agent designated by the President of the United States under Section 206 A of an Act of Congress, approved February 28th, 1920, entitled "An Act to provide for the termination of Federal Control of Railroads and systems of transportation; to provide for the settlement of disputes between carriers and their employees; to further amend an Act entitled 'An Act to regulate Commerce,' approved February 4th, 1887, as amended and for other purposes," which Act of Congress is commonly known as the "Transportation Act, 1920"; that defendant as such agent is now the proper party defendant in actions arising out of federal operation of the railroad of the Atchison, Topeka & Santa Fe Railway Company; that the cause of action, if any, on which this suit is based, arose out of such federal operation of said Atchison, Topeka & Santa Fe Railway as more particularly appears from the summons and complaint herein.

II.

Alleges that E. L. Janson, upon whom said pretended service was made was not on said 7th day of April, 1920, or at any other time, a ticket or freight agent of said Director General of Railroads or of Defendant or of said Atchison, Topeka & Santa Fe Railway, save and except that said E. L. Janson was and is engaged in the solicitation of interstate freight and passenger traffic moving on the lines of said Atchison, Topeka & Santa Fe Railway Company, wholly outside this state; and that said E. L. Janson never at any time solicited freight or passenger traffic for this Defendant's operation over the line of railroad of said Atchison, Topeka & Santa Fe Railway Company.

III.

Alleges that the pretended service herein was made under Chapter 218 Laws of Minnesota, 1913 (General Statutes 1913, paragraph 7735) which Defendant respectfully avers.

1. Is void as being in contravention of Article 1, Paragraph 7, of the Constitution of Minnesota.

2. Is void as being in contravention of Subdivision 3, Section 8, Article 1, of the Constitution of the United States.

3. Is void as being in contravention of Paragraph 1, Article 14, Amendments to the Constitution of the United States.

IV.

Admits and alleges that on or about the 5th day of August, 1919, at Isabel, Kansas, said Director General of Railroads received car A. C. L. 33957 containing wheat for transportation from said Isabel, Kansas to Hutchinson, Kansas, and that in accordance with the bill of lading then and there issued therefor, said Director General of Railroads duly and safely transported said wheat from Isabel, Kansas to Hutchinson, Kansas, and there delivered the whole thereof to the consignee of said shipment.

V.

Alleges that said car of wheat was so received and transported under the terms and conditions of a written contract or bill of lading wherein and whereby in consideration of a reduced rate of freight it was mutually agreed that such receipt and transportation should be governed by the following provisions among others:

"No carrier or party in possession of any of the property herein shall be liable for differences in the weights of grain, seed or other commodities caused by natural shrinkage or discrepancy in elevator weights."

23 Alleges that said bill of lading was a part of the duly filed and published tariffs applying to said shipment, and was expressly subject to said tariffs, which contained in addition to the foregoing the following provisions:

(*a*) Carriers will not be responsible for loss due to natural shrinkage.

(*b*) When liability is established, there shall be deducted from the loss in weight the following percentage of the total weight of the contents of the car:

One-eighth (⅛) of one (1) per cent on wheat, rye, oats and other small grain.

One-quarter (¼) of one (1) per cent on corn.

(*c*) These deductions representing reasonable shrinkage due to evaporation or other natural causes to be made from shipping weights."

VI.

Save as hereinbefore admitted or qualified Defendant denies each and every allegation in said Complaint contained.

Wherefore, Defendant prays this Honorable Court that the pretended service of the Summons and Complaint herein be adjudged null and void and of no effect, and that this Court adjudge that it has no jurisdiction over the person of this Defendant and that

Plaintiff take nothing by this action, and that Defendant have Judgment for his costs and disbursements herein.

FARICY, McMEEKIN & QUINN,
Attorneys for Defendant.

805-7 Commerce Building, St. Paul, Minnesota.

(Title of Cause.)

Reply.

Now comes the plaintiff and for a reply to the answer of the defendant in the above entitled action

I.

Denies each and every allegation, matter, statement and thing in said answer contained and all thereof save and accept as the same admits the allegations of plaintiff's complaint.

Wherefore plaintiff again prays judgment as in said complaint demanded.

ALEX. KANTER,
Attorney for Plaintiff.

354 Security Building, Minneapolis, Minnesota.

(Title of Cause.)

The cause above entitled came on for hearing on Tuesday, February 1, 1921, in the City of Minneapolis, State of Minnesota, at the Court House in the said city, in its order upon the calendar on said date, before Honorable Chas. L. Smith, one of the Judges, without a jury, according to law.

Alex. Kanter, Esq., 354 Security Building, Minneapolis, Minn., appeared as counsel for and on behalf of the Complainant, and William T. Faricy, Esq., of Messrs. Faricy, McMeekin, Quinn & Swan appeared for and on behalf of the Respondent. The following witnesses were sworn and testified and the proceedings had therein as hereinafter appears; the same having been reported by me and transcribed under my direction.

RICHARD A. MABEY,
Official Shorthand Court Reporter, Minneapolis.

(Title of Cause.)

Case No. 147,830.

I hereby certify that I was the Official Court Reporter in attendance upon the trial of the above entitled action in this court on the first day of February, 1921, and made a shorthand report of all

proceedings had upon said trial, and that the transcript to which this certificate is attached is a full, complete and correct re-
26 port of all the evidence offered or produced upon the trial of this cause, and all objections, rulings, amendments, stipulations, admissions or agreements made and entered into during the course of said trial, and all other proceedings occurring upon the hearing of said controversy.

RICHARD A. MABEY,
Official Court Reporter.

429-431 Court House, Minneapolis, Minn.

(Title of Cause.)

Mr. Fariey: May it please the Court, the defendant renews its motion to dismiss this action on the ground that chapter 218 of the Laws of Minnesota for 1913, being the general statutes of 1913, paragraph #7735 under which the pretended service of the summons and complaint was made, first, is void as being in contravention of article 1, paragraph 7 of the Constitution of Minnesota; (2) is void as being in contravention of paragraph 3, article 1, of the Constitution of the United States; (3) is void as being in contravention of paragraph 1, article 14, of the amendment to the Constitution of the United States.

It is conceded that the service in this case was made under section 7735 of the general statutes of 1913 upon a soliciting freight and passenger agent of the Atchison, Topeka & Santa Fe Rail-
27 road Company having his office at Minneapolis, Minnesota, for the solicitation of interstate freight and passenger traffic. The defendant in this connection calls attention to the fact that it made its special appearance and motion to set aside the service before putting in its answer or general appearance, and calls attention to the fact that its answer or general appearance was put in only after the overruling of its motion to dismiss and special appearance.

The Court: Motion denied.

Mr. Fariey: Note an exception.

Mr. Kanter: Your Honor, this is an action for an alleged shortage of grain shipped from Isabelle, Kansas, to Hutchinson, Kansas, wherein the plaintiff sustained a loss approximating $30.90. On the 30th of September a stipulation was entered into between counsel for the plaintiff and defendant which reads thusly:

"It is hereby stipulated and agreed by and between the parties to the above entitled action, through their respective attorneys, that the document hereto attached and marked plaintiff's exhibit A is the original bill of lading issued by the agent of the Director General of Railroads at Isabel, Kansas, governing the shipment of car L. & N. 15493 containing wheat shipped by the plaintiff herein from Isabel, Kansas, to Hutchinson, Kansas, and that the signatures to said bill of lading are the signatures of said agent of the
28 Director General of Railroads at Isabel, Kansas, and the agent of the plaintiff herein. This stipulation shall not be

construed as a voluntary submission by the defendant to the jurisdiction of this Court, and is made only after the overruling of the defendant's special appearance and the denying of his motion to set aside the service of the summons and complaint herein."

This stipulation was signed by both parties to this action. If I am not in error, I think the weight as set forth in the bill of lading was agreed upon as the loading weight. Is this right, Mr. Faricy?

Mr. Faricy: Well, the bill of lading contains a notation showing the weight of the car at point of origin, and I assume that, under the rules in these grain cases, the loading weight in the bill of lading makes out a prima facie case.

Mr. Kanter: It was 85,200 pounds of bulk wheat, and, your Honor, we now offer this bill of lading as plaintiff's exhibit A, showing that the shipment moved and the loading weight therein.

Mr. Faricy: The defendant objects to the introduction of any testimony in the case on the ground that the defendant is not properly in court, and that it is in court only after the overruling of its special appearance and motion to set aside the service, and on the ground that the statute, section 7735 of the general statutes of 1913 under which the pretended service was made (1) is void as being in contravention of article 1, paragraph 7, of the Constitution of Minnesota; (2) is void as being in contravention of subdivision 3, section 8, article 1, of the Constitution of the United States; (3) is void as being in contravention of paragraph 1, article 14, amendments to the Constitution of the United States.

The Court: Objection overruled.

Mr. Faricy: An exception.

The Court: Received.

Mr. Kanter: Your Honor, to prove the unloading weight and the price prevalent for this kind of wheat at destination counsel for defendant and myself have agreed upon certain depositions, and for the purpose of expediting matters I will read the material parts involved herein. This is the deposition of C. E. Jones, assistant manager for the Central Market of Hutchinson, Kansas.

Question. State your name, residence and occupation.

Answer. C. E. Jones, assistant manager for the Central Grain Company, Hutchinson, Kansas.

Question. What was your occupation on September 7, 1919?

Answer. Traffic manager and weight master for Larrabee Flour Mills Corporation, Hutchinson Mill.

Question. What company did you work for at that time?

Answer. Larrabee Flour Mills Corporation, and was bonded by the State of Kansas as weighmaster.

Question. Do you remember, without reference to any document or memorandum, whether you weighed a car of wheat contained in car L. & N. 15493 on or about September 7, 1919?

Answer. No.

Question. The notary will be at this time show you the document which he will mark for identification plaintiff's exhibit C. In whose handwriting does this document appear?

Answer. Same is signed by myself; the body by some clerk; don't know who.

Question. What is the document plaintiff's exhibit C?

Answer. Weight certificate of car 15493 L. & N.

Question. Was that document plaintiff's exhibit C made at the time of the transaction recorded therein?

Answer. Certificate was made after car was unloaded and weighed.

Question. Is plaintiff's exhibit C a true and correct record of the weight of the car of wheat numbered thereon?

Answer. Yes, it is.

Question. Is the signature C. E. Jones on said document, plaintiff's exhibit C, your signature?

Answer. Yes.

Question. Was plaintiff's exhibit C made in the usual course of business?

Answer. Yes.

We now offer the official weight certificate of the State of Kansas signed by a duly authorized weightmaster on car 15493 as evidence of the unloading weight of this particular car.

31 The Court: Received. What does that show?

Mr. Kanter: This shows 84,300 pounds of wheat, and it was weighed on the 7th of September, 1919.

I now offer the deposition of C. O. Heinley, of Hutchinson, Kansas, the acting manager of the Reno Flour Mills Company, and through this deposition we intend to prove the prevailing market price which this particular car brought.

Question. State your name, residence and occupation.

Answer. C. O. Heinly, Hutchinson, Kansas, Acting Manager Reno Flour Mills Company.

Question. What was your occupation on October 10, 1919?

Answer. Traffic manager for Reno Flour Mills Company.

Question. What company did you work for at that time?

Answer. Reno Flour Mills Company.

Question. Do you remember, without reference to any document or memorandum, whether you sold a carload of wheat contained in car L. & N. 15493 on or about October 10th, 1919?

Answer. No, sir.

Question. The notary will at this time show you the document which he will mark for identification plaintiff's exhibit B. In whose handwriting does this document appear?

Answer. Miss Ada Bradshaw.

Question. What is that document, plaintiff's exhibit B?

Answer. Account sales.

32 Question. It plaintiff's exhibit B a correct record of the sale of the car of wheat numbered thereon?

Answer. Yes.

Question. Was plaintiff's exhibit B made in the usual course of business?

Answer. Yes.

Question. What was the market value of wheat of the kind contained in that car at Hutchinson, Kansas, on the 10th day of October, 1919?

Answer. Price ranged from $2.07 to $1.94.

Question. What was the actual selling price of that car of wheat?

Answer. $2.06 "as is", basis Kansas City.

Mr. Kanter: Plaintiff rests.

The plaintiff rested.

Mr. Faricy: The defendant renews its motion to dismiss this action on the grounds that the defendant is not properly or legally served with process, and that it is in Court only after the overruling of its special appearance and motion to set aside the service, and on the ground that the statute, section 7735 of the general statutes of 1913 under which the pretended service was made (1) is void as being in contravention of article 1, paragraph 7, of the Constitution of Minnesota; (2) is void as being in contravention of subdivision 3, section 8 article 1, of the constitution of the United States; (3) is void as being in contravention of paragraph 1, article 14, amendments to the constitution of the United States.

The Court: Motion denied.

33 E. L. JENSEN, being first duly sworn to testify the whole truth and nothing but the truth relative to the matters in controversy in this action, testified as follows in answer to questions by counsel for the defendant Mr. Faricy.

Q. Mr. Jensen, you live in Minneapolis?

A. Yes, sir.

Q. And you were the soliciting freight and passenger agent for the Atchison, Topeka & Santa Fe Railway system at Minneapolis, Minnesota?

A. Yes, sir; under the title of general agent.

Q. Now, what is your territory over which you have charge?

A. Well, the freight and passenger territory covers the State of Minnesota, practically all the State of Iowa, North and South Dakota and part of Wisconsin.

Q. Now, in any of the territory for which you are soliciting freight and passenger business as agent under the title of general agent, does the Atchison, Topeka & Santa Fe operate any lines of railway?

A. No, not in the territory where I work, no.

Q. What are your duties as an employee of the Atchison, Topeka & Santa Fe?

A. Well, soliciting freight and passenger business and giving out information and all that.

Q. In other words, if I understand you correctly, your duties are

to obtain freight and passenger business in interstate traffic
34 for the Atchison, Topeka & Santa Fe Railway Company to move wholly outside of the State of Minnesota. Is that right?

A. Yes, sir.

Q. Now, as a part of your duties in the solicitation of freight, you receive orders from shippers for the changing and diverting of shipments in transit over the Santa Fe?

A. Yes, sir.

Q. And what do you do with those diversion orders?

A. Well, if a shipper places a diversion order with us we take the order and verify the facts and either wire or write to our officials in Chicago or Topeka, Kansas.

Q. Is that done for the convenience of your shippers and as a means of getting business?

A. Yes, sir.

Q. Now, when shippers who have bills of lading over other lines on through shipments, if it is to be transported for a part of the journey over your line, over the line of your company, without the state of Minnesota, do you give in exchange therefor bills of lading over the lines of your company?

A. Yes, sir.

Q. Now, those bills of lading are not in force until the freight is received by your line. I will ask that in a different way. Strike that out. You have a rubber stamp which you put on these bills of lading?

A. Yes.

35 Q. What does that rubber stamp provide?

A. Well, that stamp states that this bill of lading is issued in exchange for bill of lading so and so and for date so and so.

Q. Then when and under what conditions are those bills of ladings which you issue effective?

A. Well, the bills of lading become effective I should say when it is signed by myself.

Q. And it affects the shipment when your company receives the freight. Is that correct?

A. Yes, I would say that. Yes.

Q. Now, your duties also include the quoting of rates for prospective customers, do they not?

A. Yes, sir.

Q. And those rates I take it are the rates established by the published tariffs on file with the Interstate Commerce Commission?

A. Yes, sir; both freight and passenger.

Q. And your duties also include the tracing of shipments which are on your line?

A. Yes, sir.

Q. Now, by tracing you mean the locating and expediting of shipments for the patrons from whom you solicit freight and passenger business?

A. Yes, sir.

Q. Now, you have been present here when this testimony on behalf of the plaintiff has been given here in this case?

A. Yes.

Q. I will ask you whether you solicited or requested the plaintiff herein to route or ship the shipment for loss and damage for which this action is brought over the Santa Fe? You may, if you wish, in that connection examine the pleadings here so as to identify the particular shipment.

A. No, sir. I don't know anything about that shipment.

Q. And you didn't solicit it?

A. No, sir.

Q. Did you at any time represent the director general of railroads during federal operation of the Santa Fe in the soliciting of freight and passenger business?

A. In the State of Minnesota?

Q. Yes, in the State of Minnesota.

A. No, sir.

Q. What was your business during federal control?

A. I was assistant general agent at Kansas City, Missouri, for three months and then I was division freight agent at Joplin, Missouri, for about a year.

The Court: In Minneapolis at all?

The Witness: No, sir. I was away for two years.

The Court: How did this happen to be served upon you?

Mr. Fariey: This was served after the federal control expired.

Q. Now, Mr. Jensen, were you the gentleman upon whom the service of the summons and complaint in this case was made?

A. Yes, sir.

Q. And are you the E. L. Jensen who made and filed an affidavit in this case in support of the defendant's special appearance and motion to set aside service?

A. I am.

Q. I will ask you whether or not the Atchison, Topeka & Santa Fe is a Minnesota corporation?

A. No, sir; they are not.

Cross-examination.

By Mr. Alex Kanter, counsel for the plaintiff:

Q. You are what is called a soliciting freight agent for the Atchison, Topeka & Santa Fe for the business in the state of Minnesota and other states?

Mr. Fariey: That is conceded, if the Court please.

The Court: And was at the time the service was made upon you? Is that conceded?

Mr. Fariey: Yes, he was at that time.

Q. This question was not quite clear, you only signed bills of lading when you actually received the goods?

A. No, not in all cases. If a shipper diverts a shipment and asks me to issue an exchange bill of lading I sometimes issue an exchange bill of lading prior to the time the shipment reaches our line, but the exchange lading I issue bears that endorsement I spoke of before, that rubber stamp endorsement, which makes it really a part and parcel of the original bill of lading.

38 Q. That is, you issue a bill of lading when you have assurance that the commodity covered by the bill of lading is actually delivered to the railroad company?

A. Yes.

The Court: Will you please illustrate your method of soliciting and all the work you have to do with it? When you got the business what did you do?

The Witness: Well, when we get the shipment I had nothing to do with it at all. It is given to the Great Western here, for instance, and routed care of the Atchison, Topeka & Santa Fe at Kansas City or St. Joe, or at any other junction point. We endeavor to get all the freight business we can for our line at the nearest, or any junction point, and likewise passenger business. A shipper has five carloads going to California, for instance. We solicit the business, quoting the rates. We endeavor to give him the best service we can on claims and everything we can to satisfy him in the railroad end of his work.

The Court:

Q. Do you have anything to do with the bill of lading here?

A. No, sir. The bill of lading is issued by the initial line. The Great Western in that case.

The Court:

Q. Then might the thing go clear through to destination and you never hear anything more of it?

A. Yes, sir.

Mr. Fariey:

39 Q. And about passenger business. How do you solicit your passenger business, and what do you do after you get that business?

A. Well, we advertise in the papers our passenger service. We have traveling passenger agents going out to talk to prospective travelers. We give information regarding the route and hotels and the time transfers, and so forth. We give tickets to the public. They come in the office, for instance, and we give them a ticket if they want us to. We don't sell the ticket, but we issue our order on our connection, the Great Western or Burlington, for a ticket so and so, describing the ticket, and the Burlington gives to our office man the ticket, taking our order, and we take from the prospective traveler his money paying for the ticket and give to the Burlington or Great Western that money and take up the order. In that way

we supply the customer with a ticket without bothering him to go to the ticket office.

The Court:

Q. Does he pay you the part that belongs to your road as well as that part that belongs to the Burlington?
A. He pays the whole charge.

The Court:

Q. And you retain what belongs to your road?
A. We retain the money four or five hours and then give the whole amount to the initial lines that sells the ticket.

Mr. Faricy:

Q. The ticket is of whose issue?
A. The initial line issue; the Great Western line here, for instance.

Mr. Faricy:

Q. Supposing a man shipped five cars and he has a claim against your road for loss in transit or something else. What does he do?
A. He makes the claim on the Santa Fe, and sometimes sends the claim direct to our people in Topeka or Chicago, and sometimes gives it to me. I transmit it to the proper people in Chicago or Topeka as the case may be.
Q. When do you issue an exchange bill of lading? When you put on what you refer to as your rubber stamp? That is to simply clear up the matter about issuance of bills of lading in your office?
A. We issue the exchange lading for the benefit of the shipper. We issue it sometimes prior to the receipt of the shipment on our line and over—we don't always wish to delay the matter until the shipment is received by our line, but the lading always bears that rubber stamp.
Q. But you do issue bills of lading?
A. Yes, sir.
Q. And on this question of passengers, isn't it a fact—I suppose you take the tariff between Minneapolis and some point on the Santa Fe that is not covered by the portion of the Santa Fe road between Minneapolis and Santa Fe, but by use of the tariff isn't it a fact you solicit business on through tariff for business originating on one road and destined on the Santa Fe rather than the particular portion of the Santa Fe?

A. Yes, sir, we solicit business on the through road.

Q. You also receive copies of billing containing the description of shipments, points of origin, points of destination, name of consignee, name of consignor, and you are constantly occupied tracing those shipments to keep your clientele informed as to where those particular shipments are?

A. We receive car number and destination, that is about all, and we trace on that.

Mr. Faricy:

Q. And that is for the purpose, you might say, of keeping the customer satisfied?

A. Just simply for their convenience and as a means of getting more business.

The defendant rested.

Mr. Faricy: The defendant renews its motion to dismiss on the same grounds as the previous motions were made.

The Court: The same ruling. You may draw the findings.

Testimony closed.

42 PLAINTIFF'S EXHIBIT "A."

The Atchison, Topeka & Santa Fe Railway Company.

Received, subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading, at Isabel, Kansas 8/25/19 from the Farmers Co-op. Equity Co. the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

43 Consigned to order of the Farmers Co-op. Equity Co.
Destination, Hutchinson, State of Kansas, County of ——.
Notify Reno Flour Mills Co., at Hutchinson, State of Kansas.
County of ——.
Route ——. Car Initial, L. & N. Car No. 15493.

No. packages.	Description of articles and special marks.	Weight (sub. to correct'n).
	Bulk Hard Wheat	85,200

126,154.
125,799.
355 Dumps.
4 Bu. to the dump.
1,420 Bu.
Nine grain doors used.

This car billed for official inspection.

THE FARMERS CO-OP. EQUITY CO.,
Shipper.

J. L. SAGE,
Agent,

Per —— ——.

Per MERTON ANDERSON,
Mgr.

44 PLAINTIFF'S EXHIBIT "B."

The Reno Flour Mills Co.

Hutchinson, Kansas, October 10, 1919.

To Farmers Equity Company,
Isabel, Kansas:

Car No.	Initial.	Commodity.	Pounds.	Bushels.	Price.	Basis.	Gross proceeds.
15493	L. & N.	Hd. Wht.	84,300	1,405	2.06	K. C. as is.	2,894.30

Charges:

Freight, 16½	139.10	
War Tax	4.17	
Inspection	.90	
Weighing	.50	
Total	144.67	144.67
Net		2,749.63
Your Draft		2,700.00
Balance, you		49.63

E.

W. B.

45 PLAINTIFF'S EXHIBIT "C."

Weight Certificate.

State of Kansas,

Grain Inspection and Weighing Department.

Kansas City, Kan.,
Hutchinson, Kan., 9-7-19.

This certifies that a Deputy Weighmaster, under supervision of the Kansas State Grain Inspection and Weighing Department, did weigh at ——,
Initial, L. & N.
Car No. 15493.
Initial, —, Car No. —.
Grain, Wheat.
Tract, —; Draft, —; Hopper, —.
Net Weight, 84,300; Time, 3:15.
Track, —; Set. —; Spout, —.

J. S. HART,
Chief Inspector,
By C. E. JONES.

Remarks.

All claims for damages must be filed at this office before grain has left the department. This Certificate applies to the original car weighed.

46 (Title of Cause.)

It is hereby stipulated by and between the parties hereto through their respective attorneys, that the foregoing proposed case, consisting of fourteen (14) pages of typewritten matter, may be taken as conformable to the truth and as containing all the evidence offered or introduced on the trial of this cause and also all objections, rulings, orders, and all other proceedings of such trial, and that the same may be settled and allowed as the settled case herein by the Hon. Chas. L. Smith without notice.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

March 2nd, 1921.

I hereby certify that the foregoing case, consisting of fourteen (14) pages of typewritten matter, has been examined by me and found conformable to the truth and to contain all the evidence of-

fered or introduced on the trial of this cause and also all objections, rulings, orders, and all other proceedings of such trial, and I hereby settle and allow the same as the settled case herein.

C. L. SMITH,
Dated March 2nd, 1921. *Judge.*

47 (Title of Cause.)

Findings of Fact and Conclusions of Law.

The above entitled action came on before the undersigned, one of the judges of this Court on the 1st day of February, 1921, for trial by the Court without a jury. Mr. Alex Kanter appeared as attorney for plaintiff and Messrs. Faricy, McMeekin, Quinn & Swan appeared as attorneys for the defendant. The Court having heard the evidence adduced by the respective parties and after hearing counsel, makes the following.

Findings of Fact.

1. That on the 21st day of March, 1918, the Congress of the United States passed an act authorizing the President of the United States to take possession and assume control of all systems of transportation and the appurtenances thereof, in the said United States, and that by proclamation dated December 20th, 1917, and April 11th, 1918, the President of the United States did take possession and assume control of all the systems of transportation and appurtenances thereof including the Atchison, Topeka & Santa Fe Railway. That on the 20th day of February, 1920, the Congress of the United States of America passed an act terminating federal control of all systems of transportation and the appurtenances thereof and author-
48 izing the President of the United States to designate an agent against whom suits in equity and actions at law based on causes of actions arising out of possession of and operation by the President of the railroad or systems of transportation of any carrier, might be brought, and that pursuant to the authority vested in him by the Congress of the United States of America, the President of the United States has heretofore appointed, designated and named John Barton Payne as the proper agent against whom said actions may be instituted, and that the said John Barton Payne is the proper party to be named defendant in this action.

2. That at the time of the shipment hereinafter described, the Atchison, Topeka & Santa Fe Railway Company's line of railway was operated by said director general of railroads as a common carrier of freight and passengers engaged in state and interstate commerce in various states but wholly outside of the State of Minnesota: that said line of railway extended among other places, from the station of Isabel, Kansas, to the station of Hutchinson, Kansas.

3. That the Atchison, Topeka & Santa Fe Railway Company at the time of the service of the summons and complaint herein was a

45 PLAINTIFF'S EXHIBIT "C."

Weight Certificate.

State of Kansas,

Grain Inspection and Weighing Department.

Kansas City, Kan.,
Hutchinson, Kan., 9-7-19.

This certifies that a Deputy Weighmaster, under supervision of the Kansas State Grain Inspection and Weighing Department, did weigh at ——,
Initial, L. & N.
Car No. 15493.
Initial, —, Car No. —.
Grain, Wheat.
Tract, —; Draft, —; Hopper, —.
Net Weight, 84,300; Time, 3:15.
Track, —; Set, —; Spout, —.

J. S. HART,
Chief Inspector,
By C. E. JONES.

Remarks.

All claims for damages must be filed at this office before grain has left the department. This Certificate applies to the original car weighed.

46 (Title of Cause.)

It is hereby stipulated by and between the parties hereto through their respective attorneys, that the foregoing proposed case, consisting of fourteen (14) pages of typewritten matter, may be taken as conformable to the truth and as containing all the evidence offered or introduced on the trial of this cause and also all objections, rulings, orders, and all other proceedings of such trial, and that the same may be settled and allowed as the settled case herein by the Hon. Chas. L. Smith without notice.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

March 2nd, 1921.

I hereby certify that the foregoing case, consisting of fourteen (14) pages of typewritten matter, has been examined by me and found conformable to the truth and to contain all the evidence of-

fered or introduced on the trial of this cause and also all objections, rulings, orders, and all other proceedings of such trial, and I hereby settle and allow the same as the settled case herein.

C. L. SMITH,
Dated March 2nd, 1921. *Judge.*

47 (Title of Cause.)

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The above entitled action came on before the undersigned, one of the judges of this Court on the 1st day of February, 1921, for trial by the Court without a jury. Mr. Alex Kanter appeared as attorney for plaintiff and Messrs. Faricy, McMeekin, Quinn & Swan appeared as attorneys for the defendant. The Court having heard the evidence adduced by the respective parties and after hearing counsel, makes the following.

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48 izing the President of the United States to designate an agent against whom suits in equity and actions at law based on causes of actions arising out of possession of and operation by the President of the railroad or systems of transportation of any carrier, might be brought, and that pursuant to the authority vested in him by the Congress of the United States of America, the President of the United States has heretofore appointed, designated and named John Barton Payne as the proper agent against whom said actions may be instituted, and that the said John Barton Payne is the proper party to be named defendant in this action.

2. That at the time of the shipment hereinafter described, the Atchison, Topeka & Santa Fe Railway Company's line of railway was operated by said director general of railroads as a common carrier of freight and passengers engaged in state and interstate commerce in various states but wholly outside of the State of Minnesota; that said line of railway extended among other places, from the station of Isabel, Kansas, to the station of Hutchinson, Kansas.

3. That the Atchison, Topeka & Santa Fe Railway Company at the time of the service of the summons and complaint herein was a

railway corporation organized and existing under and by virtue of the laws of the State of Kansas, and owning a line of railway in said State of Kansas and other states, but that said railway company does not own or operate and never has owned or operated any
49 line of railway within the State of Minnesota and that the director general of railroads did not at any time operate any line of railway of the Atchison, Topeka & Santa Fe Railway Company within the State of Minnesota; that said Atchison, Topeka & Santa Fe Railway Company on the date of the service of the summons and complaint herein maintained a soliciting freight and passenger agent at Minneapolis, Minnesota, named E. L. Jansen, for the purpose of soliciting and obtaining interstate freight and passenger traffic for transportation over the line of the Atchison, Topeka & Santa Fe Railway Company without the State of Minnesota; that said E. L. Jansen did not solicit or request the plaintiff herein to route or ship the car of wheat hereinafter described over the lines of the said Atchison, Topeka & Santa Fe Railway Company operated by said director general of railroads; that the summons and complaint herein were served upon E. L. Jansen under the authority of paragraph 7735 of the general statutes of Minnesota, 1913 and chapter 218 Laws of Minnesota, 1913.

4. That plaintiff is and during all times hereinafter mentioned, was a corporation organized and existing under and by virtue of the laws of the State of Kansas.

5. That at the station of Isabel, Kansas on or about the 25th day of August 1919, the plaintiff delivered to the director general of railroads, operating the line of railway of the Atchison, To-
50 peka & Santa Fe Railway Company as a common carrier, one carload of wheat, the property of the plaintiff consisting of Eighty-five Thousand Two Hundred (85,200) pounds, loaded and contained in L. & N. car 15493, billed and consigned for transportation over the line of said Atchison, Topeka & Santa Fe Railway Company as operated by said director general of railroads to Hutchinson, Kansas, there to be delivered to the order of the plaintiff.

6. That said director general of railroads did not transport said wheat carefully, but on the contrary negligently lost Eleven Hundred (1,100) pounds of said wheat while the same was in the possession and under the control of said director general of railroads as such common carrier; that said director general of railroads delivered Eighty-four Thousand One Hundred (84,100) pounds of said wheat to plaintiff's order at the destination of said shipment; that said wheat so lost as aforesaid was of the market value of Thirty and 90/100 ($30.90) dollars. The Court finds as

Conclusions of Law.

1. That plaintiff is entitled to judgment against said defendant in the amount of Thirty and 90/100 ($30.90) with interest thereon

the rate of six per cent per annum from the 25th day of August, 1919.

2. That plaintiff is entitled to judgment against said defendant for his costs and disbursements herein.

Let judgment be entered accordingly.

By the Court:

C. L. SMITH,
Municipal Judge.

Dated at Minneapolis, Minn., February 17, 1921.

A stay of ten days is hereby granted.

C. L. SMITH,
Judge.

(Title of Cause.)

Notice of Motion.

To the above named plaintiff and to Alex Kanter, its attorney:

You will please take notice that on the 23rd day of February, 1921, at 2 o'clock P. M., in the Court House in the City of Minneapolis, in the said County and State, defendant will move the Court for an order vacating and setting aside the Findings of Fact and Conclusions of Law herein which were duly filed herein on the 17th day of February, 1921, and for an order dismissing this action on the following grounds:

(a) That the Atchison, Topeka and Santa Fe Railway Company at the time of the service of the Summons and Complaint herein, owned and operated a line of railway in the State of Kansas and other states, but that said railway company did not own or operate and never has owned or operated any line of railway within the State of Minnesota and that said Atchison, Topeka & Santa Fe Railway Company did not do or transact any business within the said State of Minnesota save and except that one E. L. Hansen upon whom said service was made, was and is engaged in the solicitation of interstate freight and passenger traffic for transportation over the lines of said Atchison, Topeka & Santa Fe Railway Company without said state.

(b) That the defendant herein has not voluntarily submitted himself to the jurisdiction of this court, but on the contrary has specifically and continuously made due and proper objection thereto.

(c) That chapter 218 Laws of Minnesota 1913 (general Statute 1913, paragraph 7735) under which said service was made,

(1) Is void as being in contravention of Article One (1) paragraph Seven (7) Constitution of Minnesota.

2. Is void as being in contravention of Subdivision Three (3) Section Eight (8) Article One (1) of the Constitution of the United States.

3. Is void as being in contravention of paragraph One (1) Article Fourteen (14) Amendments to the Constitution of the United States.

That said motion will be made upon the files and records of said case and the testimony introduced at the trial of said case.

FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

805 Commerce Bldg., St. Paul, Minn.

53 (Title of Cause.)

Order Denying Motion.

The above entitled case came on before the undersigned, one of the Judges of said Court at a special term thereof on the 23rd day of February, 1921, upon the motion of the defendant for an Order to vacate and set aside the Findings of Fact and Conclusions of Law heretofore entered on the 17th day of February, 1921, and for an Order dismissing the said action on the grounds that the Court has no jurisdiction of the defendant and that said defendant has not voluntarily submitted to the jurisdiction of this Court.

Messrs. Faricy, McMeekin, Quinn and Swan appeared for the defendant for support of said motion and Alex Kanter, appeared for the plaintiff in opposition thereto.

The Court having heard the arguments of the respective parties and after due consideration

It is ordered that the motion be, and the same hereby is in all things denied.

By the Court:

C. L. SMITH,
Judge.

Dated February 23, 1921.

54 (Title of Cause.)

Judgment March 9, 1921.

This cause came on for trial at a regular term of the above named Court, held on Tuesday, the 7th day of September, A. D. 1920, and was tried by the Court without a jury, on the 1st day of February, A. D. 1921, and the Court after hearing the evidence adduced at said trial, and being fully advised in the premises, did on the 17th day of February, A. D. 1921, duly make and file its findings and order for judgment herein.

Now, therefore, in accordance with said order, and on motion of Alex Kanter, plaintiff's attorney, it is hereby adjudged that the plaintiff recover of the defendant and each of them the sum of Thirty-three and 65/100 ($33.65) Dollars, the amount found due, and interest,

with Fourteen and 20/100 ($14.21) Dollars costs and disbursements, as taxed and allowed, amounting in all to the sum of Forty-seven and 85/100 ($47.85) Dollars.

By the Court.

HARRY MOORE,
Clerk of the Municipal Court.
By R. R. RIPPE,
Deputy.

$47.85.

55 (Title of Cause.)

Notice of Appeal.

To Alex Kanter, attorney for plaintiff, and to Harry Moore, Esquire, clerk of the above-named Court:

SIRS:

You will please take notice that the above named Defendant appeals to the Supreme Court of the State of Minnesota from that certain Judgment and the whole thereof entered in the above entitled action on the 9th day of March, 1921, for the sum of Forty-seven and 85/100 Dollars ($47.85), in favor of the Plaintiff and against said Defendant.

Dated March 10th, 1921.

FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

805-7 Commerce Building, St. Paul, Minnesota.

56 (Title of Cause.)

Stipulation Waiving Bond.

Whereas the Defendant appeals to the Supreme Court of the State of Minnesota from that certain Judgment entered in the above entitled action on the 9th day of March, 1921.

Now, Therefore, it is Stipulated and Agreed by and between the parties to the above entitled action, through their respective attorneys, that the execution and filing by the Defendant of a bond of appeal in the above entitled action is hereby waived and that to all intents and purposes the appeal may be in all things prosecuted with the same effect as though a good and sufficient bond had been executed and filed, and that all further proceedings in the Municipal Court in the above entitled matter are hereby stayed until the final determination of the appeal in the Supreme Court.

Dated this 10th day of March, 1921.

ALEX KANTER,
Attorney for Plaintiff.
FARICY, McMEEKIN, QUINN & SWAN,
Attorneys for Defendant.

57 STATE OF MINNESOTA:

In Supreme Court.

On the 30th day of August, 1921, there was filed by appellant a brief which, as required by rule 19 of this court, contained an assignment of errors, which is in words and figures as follows, to-wit:

I.

The court below erred in denying defendant's motion to set aside the service of the summons.

II.

The Court below erred in denying defendant's motion to dismiss at the call of the case for trial.

III.

The court below erred in overruling defendant's objection to the introduction of any evidence in the case.

IV.

The court below erred in denying defendant's motion to dismiss at the conclusion of Plaintiff's case.

V.

The court below erred in denying the defendant's motion to dismiss at the conclusion of all the evidence.

VI.

The court below erred in its conclusion of law that plaintiff is entitled to judgment against defendant in the amount of thirty and 90/100 dollars ($30.90), or in any amount whatsoever, for the reason that the findings of fact do not support the jurisdiction of the court over the person of the defendant.

VII.

The court below erred in entering judgment against the defendant for the reason that said judgment operates to deprive defendant of his property without due process of law, in violation of the Fourteenth Amendment to the Federal Constitution, and in violation of Article 1, paragraph 7 of the Constitution of Minnesota.

VIII.

The court below erred in entering judgment against the defendant for the reason that said judgment operates to place unreasonable conditions, burdens and restraints upon defendant's constitutional right to engage in interstate commerce, in violation of Subdivision 3, Section 8, Article 1 (The Commerce Clause) of the Federal Constitution.

IX.

The court below erred in denying defendant's motion to vacate and set aside the findings of fact and conclusions of law and to dismiss the action.

X.

The rulings and holdings of the court below in denying defendant's various motions to dismiss and in entering judgment against defendant were repugnant to and in conflict with Section 206 of the Transportation Act, 1920.

XI.

The rulings and holdings of the Court below in denying defendant's various motions to dismiss and in entering judgment against defendant were repugnant to and in conflict with Article 1, Section 8, Subdivision 3 of the Constitution of the United States, and also the Fourteenth Amendment to said Constitution, and denied to Defendant rights, privileges and immunities thereby guaranteed.

I, Herman Mueller, do hereby certify that the foregoing and annexed is a true and correct copy of the original assignment of errors contained in the brief of the appellant herein and filed in this court pursuant to rule 19 of the rules of this court.

In testimony whereof I have hereunto set my hand and affixed the seal of this court at my office at St. Paul, Minnesota, this 1st day of February, 1922.

[Seal of Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court,
State of Minnesota.

Endorsed: #358. Hennepin County. Filed December 16th, 1921. Herman Mueller, Clerk.

22351.

FARMERS' CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, as Agent Designated by the President under Transportation Act of 1920, Appellant.

Per Curiam:

The defendant appeals from a judgment rendered by the municipal court of the city of Minneapolis for the loss, while in transit, of a quantity of grain shipped from Isabel, Kansas, to Hutchinson, Kansas, over the Atchison, Topeka and Santa Fe Railway while under Federal control. The railway company neither owns nor operates any line of railway in this State, but maintains, in this State, an agent for the solicitation of freight and passenger traffic over its lines outside of this State. It does no business in this State except to maintain such resident agent and solicit such traffic. The summons and complaint were served on this agent under and pursuant to section 7735 of the General Statutes of 1913, which provides,

"that any foreign corporation having an agent in this State for the solicitation of freight and passenger traffic or either thereof over its lines outside of this State, may be served with summons by delivering a copy thereof to such agent."

The defendant rests his appeal on the contention that, in so far as the statute provides that service on a soliciting freight or passenger agent shall confer jurisdiction over a foreign railway company which does no business in this State except to solicit freight and passenger traffic therein for its lines outside of the State, the statute contravenes the federal constitution and is void. This question has already been determined adversely to defendant by this court in the following cases: Armstrong v. N. Y. C. Ry. Co., 129 Minn. 104, 151 N. W. 917; Lagergren v. Penn. Ry. Co., 130 Minn. 35, 152 N. W. 1102; Rishmiller v. D. & R. G. Ry. Co., 134 Minn. 261, 159 N. W. 272; Merchant's Elev. Co. v. C. & O. Ry. Co., 147 Minn. 188, 179 N. W. 734; and Callahan v. U. P. Ry. Co., 182 N. W. 1004. We recognize that the final decision of this question rests with the Supreme Court of the United States, but, as we read its decisions, that court has not yet determined the question and, until it does, we feel constrained to follow our previous rulings. Judgment affirmed.

60 STATE OF MINNESOTA:

Supreme Court.

22361.

FARMERS CO-OPERATIVE EQUITY CO., Respondent,

vs.

JOHN BARTON PAYNE, as Agent Designated by the President under Transportation Act of 1920, Appellant.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the Judgment of the Court below, herein appealed from, to-wit, of the Municipal Court within and for the County of Hennepin be and the same hereby is in all things Affirmed.

And it is further determined and adjudged that Respondent herein, do have and recover of Appellant herein the sum and amount of Forty and 50/100 Dollars, ($40.50) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed January 3rd, A. D. 1922.

By the Court.

Attest. HERMAN MUELLER,
Clerk.

Statement for Judgment.

Statutory Costs	$25.00
Return	
Appeal Bond	
Printer	15.25
Postage and Express	.25
Clerk	
Filing Mandate	
Acknowledgments	
Transcript	
Total	$40.50

[Endorsed:] Copy. State of Minnesota, Supreme Court. Transcript of Judgment. Filed Jany. 3d, A. D. 1922. Herman Mueller, clerk.

STATE OF MINNESOTA, *ss:*

Supreme Court.

Herman Mueller, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining

of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul —— —, A. D. 191-.

HERMAN MUELLER, *Clerk.*

61 Endorsed: Supreme Court. Filed Feb. 1, 1922. H Mueller, Clerk.

STATE OF MINNESOTA:

In Supreme Court.

FARMERS CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, Director General of Railroads as Agent Designated by the President under the Transportation Act of 1920, Appellant.

Petition.

Your petitioner, John Barton Payne, Director General of Railroads, as agent designated by the President under the Transportation Act of 1920, represents that he is aggrieved by a final judgment entered against him by the Supreme Court of the State of Minnesota on January 3, 1922, in an action at law then therein pending wherein this petitioner was appellant and the Farmers Co-operative Equity Company was respondent.

That said final judgment was entered in the highest Court of the State of Minnesota in a suit wherein was drawn in question the validity of a Statute of the State, Section 7735 of the Minnesota General Statutes of 1913, on the grounds of its being repugnant to the Constitution and the laws of the United States and the decision was in favor of the validity of the Statute; and the said judgment is against the Constitutional right claimed by this Petitioner and is contrary to the Constitution and laws of the United States; all of which will more fully appear in detail in the assignments of error presented herein and filed herein.

Wherefore, Your petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Minnesota, to the end that the record in said matter may be removed into the Supreme Court of the United

62 States and the error complained of by your petitioner may be examined and corrected and said judgment reversed.

And your petitioner will ever pray.

GARDINER LATHROP AND
THOMAS F. QUINN,
Attorneys for John Barton Payne, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920.

Writ of Error allowed.
Dated January 31st, 1922.

CALVIN L. BROWN,
Chief Justice of Supreme Court, State of Minnesota.

63 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

STATE OF MINNESOTA:

In Supreme Court.

FARMERS CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920, Appellant.

Assignment of Errors and Prayer.

Now comes John Barton Payne, Director General of Railroads as agent, designated by the President under the Transportation Act of 1920, the appellant above named, and says that the Supreme Court of the State of Minnesota, erred in its decision and judgment in said cause, as appears from the record therein, and that the errors committed are as follows:

I.

The Supreme Court of the State of Minnesota erred in holding that Chapter 218, Laws of Minnesota, 1913 (General Statutes 1913, Paragraph 7735) providing that any foreign corporation "having an agent in this State for the solicitation of freight and passenger traffic, or either thereof, over its lines outside of this State, may be served with summons by delivering a copy thereof to such agent" is not in conflict with, in violation of and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States in that the same operates to deprive defendant and certain other citizens of the United States of the rights, privileges and immunities thereby guaranteed and to deprive defendant and others of property without due process of law and to deny defendant and others the equal protection of the law, and that said Statute also is in conflict with, repugnant to and in violation of Subdivision 3, Section 8, Article 1 (the Commerce Clause) of the Federal Constitution and Section 206 of the Transportation Act of 1920.

II.

The said Court erred in affirming the denial of defendant's motion to set aside the service of Summons.

III.

The said Court erred in affirming the denial of defendant's
64 motion to dismiss at the call of the case for trial.

IV.

That said court erred in affirming the overruling of defendant's objection to the introduction of any evidence in the case.

V.

That said court erred in affirming the denial of Defendant's motion to dismiss at the conclusion of Plaintiff's case.

VI.

That said court erred in affirming the denial of the defendant's motion to dismiss at the conclusion of all the evidence.

VII.

That said court erred in affirming the conclusion of law that plaintiff is entitled to judgment against defendant in the amount of Thirty and 90/100 ($30.90) Dollars, or in any amount whatsoever, for the reason that the Findings of Fact do not support the jurisdiction of the courts over the person of the defendant.

VIII.

That said court erred in upholding service of the writ upon the defendant on the faith of said Chapter 218, Laws of Minnesota 1913 (General Statutes 1913, paragraph 7735); and in affirming the entry of judgment against the defendant for the reason that said judgment operates to deprive defendant of his property without due process of law, and denies to defendant the equal protection of the laws, in violation of the Fourteenth Amendment of the Federal Constitution.

IX.

That said court erred in upholding service of the writ upon the defendant on the faith of said Chapter 218, Laws of Minnesota 1913 (General Statutes 1913, Paragraph 7735) and in affirming the entry of judgment against the Defendant for the reason that said judgment operates to place unreasonable conditions, burdens and restraints upon defendant's constitutional right to engage in
interstate commerce, in violation of sub-division 3, Section
65 8, Article 1 (the commerce clause), of the Federal Constitution.

X.

That said courts erred in affirming the denial of Defendant's motion to vacate and set aside the findings of fact and conclusions of law and to dismiss the action.

XI.

The rulings and holdings of said court in affirming the denial of Defendant's various motions to dismiss and in affirming judgment against defendant were repugnant to and in conflict with Section 206 of the Transportation Act, 1920.

XII.

The rulings and holdings of said court in affirming the denial of defendant's various motions to dismiss and in affirming judgment against defendant were repugnant to and in conflict with Article 1, Section 8, sub-division 3, of the Constitution of the United States and also the Fourteenth Amendment to said Constitution, and denied to defendant rights, privileges and immunities thereby guaranteed.

Wherefore, said appellant, John Barton Payne, Director General of Railroads, as agent designated by the President, under the Transportation Act of 1920, prays that for the errors aforesaid, the said judgment be reversed.

Dated this 31 day of January 1922.

GARDINER LATHROP AND
THOMAS F. QUINN,
Attorneys for John Barton Payne, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920.

66 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

STATE OF MINNESOTA:

In Supreme Court.

FARMERS CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920, Appellant.

Bond.

Know all men by these presents, that we, John Barton Payne, Director General of Railroads, as agent designated by the President under the Transportation Act of 1920, as principal, and the National Surety Company, a corporation, as surety, are held and firmly bound unto the above named respondent, Farmers Co-operative Equity Company, a corporation, in the sum of Five Hundred ($500.00) Dollars, to be paid to it and for the payment of which we bind ourselves and our successors and assigns firmly by these presents.

Sealed with our seals and dated this 31st day of January, 1922.

The condition of this obligation is such that, whereas the said John Barton Payne, Director General of Railroads, as agent designated by the President, under the Transportation Act of 1920, appellant, seeks to prosecute his writ of error in the Supreme Court of the United States and to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Minnesota.

Now, therefore, if the above named appellant shall prosecute his writ of error to effect and answer all costs and damages which may be adjudged, if he fails to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

JOHN BARTON PAYNE.
Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920.
By THOMAS F. QUINN,
His Attorney.

67

NATIONAL SURETY COMPANY.
By L. A. GREEN, [SEAL.]
Its Attorney in Fact.

Witnesses:
WILLIAM T. FARICY.
M. TRECHERECISION.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 31st day of January, A. D. 1922, before me, appeared Thomas F. Quinn, to me personally known to be the same person who executed the foregoing bond in behalf of the principal and ac-

knowledged that he executed the same as the free act and deed of said principal, and for the uses and purposes therein set forth.

[SEAL.] WILLIAM T. FARICY,
Notary Public, Ramsey County, Minn.

My Commission Expires April 15, 1928.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 31st day of January, A. D. 1922, before me appeared L. A. Green, to me personally known, who, being by me duly sworn, did say that he is the Attorney-in-Fact of the National Surety Company, the corporation described in and who executed the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said L. A. Green acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.] G. E. JOHNSON,
Notary Public, Ramsey County, Minn.

My Commission Expires —— —, ——.

The foregoing bond is hereby approved as a supersedeas this 31st day of January, A. D. 1922.

CALVIN L. BROWN,
Chief Justice Supreme Court of Minnesota.

68 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Justices of the Supreme Court of the State of Minnesota, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Minnesota, before you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between Farmers Co-operative Equity Company, Respondent, vs. John Barton Payne, Director General of Railroads, as agent designated by the President under the Transportattion *Action* of 1920, Appellant, wherein was drawn in question the validity of a statute of the State of Minnesota, on the ground of its being repugnant to the Constitution and Laws of the United States, and the decision was in favor of its validity. A manifest error hath happened to the great damage of the said appellant as by his complaint appears.

We being willing that error, if any hath been, *could* be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that

then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the 31st day of January, in the year of our Lord One Thousand Nine Hundred and Twenty-Two.

[Seal U. S. Dist. Court, Dist. of Minnesota, Third Division.]

JOEL M. DICKEY,
Clerk of the United States District Court for the District of Minnesota,
By MARGARET L. MULLANE,
Deputy Clerk.

Allowed January 31st, 1922.
CALVIN L. BROWN,
Chief Justice Supreme Court of Minnesota.

69 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Farmers Co-operative Equity Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the Supreme Court of the State of Minnesota, wherein John Barton Payne, Director General of Railroads, as agent designated by the President, under the Transportation Act of 1920 is plaintiff in error and you are Defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 31st day of January, in the year of our Lord, One Thousand Nine Hundred and Twenty-Two.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

Attest:

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk Supreme Court of Minnesota.

Service of the foregoing citation is admitted and receipt of a copy thereof acknowledged this 1st day of February 1922.

ALEX KANTER,
Attorneys for Farmers Co-operative Equity Company.

70 STATE OF MINNESOTA:

In Supreme Court.

I, Herman Mueller, Clerk of the said Court, do hereby certify that there has been lodged with me as such clerk, in the matter of John Barton Payne, Director General of Railroads as agent, designated by the President under the Transportation Act of 1920, Appellant, vs. Farmers Co-operative Equity Company, Respondent:

1. The Original bond of which a copy is herein set forth.

2. Copies of the Writ of Error as herein set forth—one for each Respondent and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this 1st day of February, 1922.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court, State of Minnesota.

71 Endorsed: Supreme Court. Filed Feb. 1, 1922. H. Mueller, Clerk.

STATE OF MINNESOTA:

In Supreme Court.

FARMERS CO-OPERATIVE EQUITY COMPANY, Respondent,

vs.

JOHN BARTON PAYNE, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920, Appellant.

To the clerk of the above-named court:

Will you please prepare transcript of record on Writ of Error, carrying the above entitled cause to the Supreme Court of the United States for review, said transcript to consist of the following:

1. Transcript of all proceedings in the Supreme Court of Minnesota, including the judgment entered therein and the opinion of the Court therein.

2. The original Petition for Writ of Error, original Assignment of Errors, copy of Bond, original Writ of Error, original Citation, certificate of Lodgment, your return to Writ of Error and this præcipe for Transcript.

3. Your certificate.

GARDINER LOTHROP AND
THOMAS F. QUINN,
Attorneys for John Barton Payne, Director General of Railroads, as Agent Designated by the President under the Transportation Act of 1920.

Dated February 1st, 1922.

Due service of the foregoing præcipe and a receipt of a copy thereof acknowledged this 1st day of February, 1922.

ALEX KANTER,
Attorney for Farmers Co-operative Equity Company.

72 STATE OF MINNESOTA, *ss:*

In Supreme Court.

I, Herman Mueller, Clerk of the Supreme Court of the State of Minnesota, in obedience to the Writ of Error herein issued, certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment and all of the proceedings had in said Supreme Court of the State of Minnesota in the case between John Barton Payne, Director General of Railroads, as agent designated by the President, under the Transportation Act of 1920, Appellant, and Farmers Co-operative Equity Company, Respondent, including the opinion of said Supreme Court filed upon the hearing in which the judgment herein was rendered.

I do further certify and return herewith a complete transcript of all the original files and papers transmitted to this Court by the Clerk of the Municipal Court of the City of Minneapolis, Minnesota, in which Court this cause originated.

I also return herewith the original petition for writ of error, original assignment of errors, copy of bond, original writ of error, original citation, certificate of lodgment, return to writ of error and præcipe for transcript of record.

I further certify that the foregoing constitutes a true, full and complete return to said writ of error.

In witness whereof I have hereunto set my hand and the seal of said Supreme Court of Minnesota, at the Capitol, St. Paul Minnesota, this 1st day of February, 1922.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court, State of Minnesota.

73 STATE OF MINNESOTA, *ss:*

Supreme Court.

In obedience to the commands of the within writ I hereby transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the case of John Barton Payne, Director General of Railroads as agent, designated by the President under the Transportation Act of 1920, Appellant vs. Farmers Co-operative Equity Company, Respondent, together with all things concerning the same.

In witness whereof I have hereunto set my hand and affixed the seal of said Court at my office in St. Paul, Minnesota, this 1st day of February, 1922.

[Seal of the Supreme Court, State of Minnesota.]

HERMAN MUELLER,
Clerk of the Supreme Court, State of Minnesota.

Endorsed on cover: File No. 28,704. Minnesota Supreme Court. Term No. 749. John Barton Payne, director general of railroads, as agent, &c., plaintic in error, vs. Farmers Co-operative Equity Company. Filed February 11th, 1922. File No. 28,704.

Office Supreme Court,
FILED
JAN 25 1923
WM. R. STANSBI
CLE

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1922.

No. 270

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT UNDER TRANSPORTATION ACT, 1920,
Plaintiff in Error,

vs.

FARMERS' CO-OPERATIVE EQUITY COMPANY,
Defendant in Error.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

GARDINER LATHROP,
HOMER W. DAVIS,
THOMAS F. QUINN,
Attorneys for Plaintiff in Error.

WILLIAM T. FARICY,
Of Counsel.

BUNTHORP-WARREN PRINTING COMPANY, CHICAGO.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1922.

No. 270

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT UNDER TRANSPORTATION ACT, 1920,

Plaintiff in Error,

vs.

FARMERS' CO-OPERATIVE EQUITY COMPANY,

Defendant in Error.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This writ of error is prosecuted for the purpose of bringing up for review by this court a judgment of the Supreme Court of Minnesota, entered January 3, 1922 (150 Minn. 534, 186 N. W. 130), on appeal from the Municipal Court of Minneapolis in an action brought by defendant in error, a Kansas corporation, against John Barton Payne, Director General of Railroads, as Agent, who was then the agent designated by

the President under subdivision (a) of Section 206 of the Transportation Act of 1920 (41 Stat. L. 456) as the party defendant in suits based on causes of action arising out of the possession, use or operation by the President of the railroad of any carrier.

The following brief opinion filed by the Supreme Court of Minnesota (Trans., 32) gives a bird's-eye view of the facts, the statute and the questions involved:

> "The defendant appeals from a judgment rendered by the municipal court of the city of Minneapolis for the loss, while in transit, of a quantity of grain shipped from Isabel, Kansas, to Hutchinson, Kansas, over the Atchison, Topeka and Santa Fe Railway while under Federal control. The railway company neither owns nor operates any line of railway in this State, but maintains, in this State, an agent for the solicitation of freight and passenger traffic over its lines outside of this State. It does no business in this State except to maintain such resident agent and solicit such traffic. The summons and complaint were served on this agent under and pursuant to section 7735 of the General Statutes of 1913, which provides,
> 'that any foreign corporation having an agent in this State for the solicitation of freight and passenger traffic or either thereof over its lines outside of this State, may be served with summons by delivering a copy thereof to such agent.'
>
> The defendant rests his appeal on the contention that, in so far as the statute provides that service on a soliciting freight or passenger agent shall confer jurisdiction over a foreign railway company which does no business in this State except to solicit freight and passenger traffic therein for its lines outside of the State, the statute contravenes the federal constitution and is void. This question has already been determined adversely to defendant by this court in the following cases: *Armstrong* v. *N. Y. C. Ry. Co.* 129 Minn. 104, 151 N. W. 917; *Lagergren* v. *Penn. Ry. Co.* 130 Minn. 35, 152 N. W. 1102; *Rishmiller* v. *D. & R. G. Ry. Co.* 134 Minn. 261, 159 N. W. 272; *Merchant's Elev. Co.* v. *C. & O. Ry. Co.* 147

Minn. 188, 179 N. W. 734; and *Callahan* v. *U. P. Ry. Co.* 182 N. W. 1004. We recognize that the final decision of this question rests with the Supreme Court of the United States, but, as we read its decisions, that court has not yet determined the question and, until it does, we feel constrained to follow our previous rulings. Judgment affirmed."

The facts more in detail and the proceedings prior to the affirmance of the judgment by the Supreme Court are as follows:

The suit was based upon an alleged negligent loss of 11,000 pounds of wheat from a carload shipment received for transportation August 25, 1919, at Isabel, Kansas, under a bill of lading issued by an agent of the Director General of Railroads engaged in the operation of the railroad of The Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as "Santa Fe"), said shipment having been destined to Hutchinson, Kansas, to which point it moved and where it was thereafter delivered. (Trans., 1, 2.)

The summons was served April 7, 1920, on one E. L. Jansen, a soliciting freight and passenger agent of the Santa Fe at his office at Minneapolis (Trans., 6, fol. 12), which was opened after the expiration of federal control of railroads. (Trans., 19, fol. 36.)

Subdivision (b) of Section 206 of the Transportation Act provides that process in suits based on causes of action arising out of the operation of any particular railroad by the President may be served upon any agent or officer of the carrier which after federal control operates such railroad, if such agent or officer is authorized by law to be served with process in proceedings against such carrier and the carrier has made a contract by or through the President for the conduct of litigation arising out of operation during Federal control.

No testimony was introduced by defendant on the merits of the case.

At the conclusion of plaintiff's case the motion to dismiss was again renewed. (Trans., 17.)

The trial court found as facts that the Santa Fe is a foreign corporation, doing no business in Minnesota, except such solicitation of interstate freight and passenger traffic as it did through Jansen; that the service was made under the section of the statutes in question and that the allegations of the complaint had been established by plaintiff. (Trans., 25, 26.) As a conclusion of law the court ordered judgment for plaintiff in the amount demanded in the complaint. (Trans., 26, 27.)

These findings, in so far as they are material to the question presented by this appeal, are as follows:

> "That at the time of the shipment hereinafter described, the Atchison, Topeka & Santa Fe Railway Company's line of railway was operated by said Director General of Railroads as a common carrier of freight and passengers engaged in state and interstate commerce in various states but wholly outside of the State of Minnesota; that said line of railway extended among other places, from the station of Isabel, Kansas, to the station of Hutchinson, Kansas.
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> That the Atchison, Topeka & Santa Fe Railway Company at the time of the service of the summons and complaint herein was a railway corporation organized and existing under and by virtue of the laws of the State of Kansas, and owning a line of railway in said State of Kansas and other states, but that said railway company does not own or operate and never has owned or operated any line of railway within the State of Minnesota and that the Director General of Railroads did not at any time operate any line of railway of the Atchison, Topeka & Santa Fe Railway Company within the State of Minnesota; that said Atchison, Topeka & Santa Fe Railway Company on the date of the service of the summons and complaint herein maintained a solicit-

ing freight and passenger agent at Minneapolis, Minnesota, named E. L. Jansen, for the purpose of soliciting and obtaining interstate freight and passenger traffic for transportation over the line of the Atchison, Topeka & Santa Fe Railway Company without the State of Minnesota; that said E. L. Jansen did not solicit or request the plaintiff herein to route or ship the car of wheat hereinafter described over the lines of the said Atchison, Topeka & Santa Fe Railway Company operated by said Director General of Railroads; that the summons and complaint herein were served upon E. L. Jansen under the authority of paragraph 7735 of the General Statutes of Minnesota, 1913, and Chapter 218, Laws of Minnesota, 1913."

The usual motion to amend the findings and conclusion, based upon the objections to the service and to the statute in question, were made (Trans., 27) and denied (Trans., 28), whereupon this appeal was taken from the judgment (Trans., 29) to the Supreme Court of Minnesota, where, by appropriate assignments of errors, (Trans., 30, 31) it was contended that the statute in question, as construed and applied by the trial court, when considered in the light of the facts in the case, was unconstitutional, being in conflict with the Fourteenth Amendment and the Commerce Clause as well as Section 206 of the Transportation Act, 1920, and that the judgment based thereon was, therefore, void and should be reversed.

The Supreme Court by its opinion (Trans., 32), quoted in full at the outset of this statement, overruled these contentions and affirmed the judgment on the strength of the statute.

In conformity with the federal statute requiring it, this court, under date of March 20, 1922, on motion duly made, substituted James C. Davis, the present Director General and agent designated by the President, for John Barton Payne, who held that office and was such agent when the suit was originally brought.

Specification of Errors Relied Upon.

1. The Supreme Court of the State of Minnesota erred in holding that Chapter 218, Laws of Minnesota, 1913, (General Statutes 1913, paragraph 7735), providing that any foreign corporation "having an agent in this state for the solicitation of freight and passenger traffic, or either thereof, over its lines outside of this state, may be served with summons by delivering a copy thereof to such agent" is not in conflict with, in violation of and repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States in that the same operates to deprive defendant and certain other citizens of the United States of the rights, privileges and immunities thereby guaranteed and to deprive defendant and others of property without due process of law and to deny defendant and others the equal protection of the laws, and that said statute, also, is in conflict with, repugnant to and in violation of subdivision 3, Section 8, Article 1 (the Commerce Clause) of the Federal Constitution and Section 206 of the Transportation Act of 1920.

2. The said court erred in affirming the denial of defendant's motion to set aside the service of summons.

3. The said court erred in affirming the denial of defendant's motion to dismiss at the call of the case for trial.

4. That said court erred in affirming the overruling of defendant's objection to the introduction of any evidence in the case.

5. That said court erred in affirming the denial of defendant's motion to dismiss at the conclusion of plaintiff's case.

6. That said court erred in affirming the denial of the defendant's motion to dismiss at the conclusion of all the evidence.

7. That said court erred in affirming the conclusion of law that plaintiff is entitled to judgment against defendant in the amount of Thirty and 90/100 ($30.90) Dollars, or in any amount whatsoever, for the reason that the findings of fact do not support the jurisdiction of the court over the person of the defendant.

8. That said court erred in upholding service of the writ upon the defendant on the faith of said Chapter 218, Laws of Minnesota 1913, (General Statutes 1913, paragraph 7735), and in affirming the entry of judgment against the defendant, for the reason that said judgment operates to deprive defendant of his property without due process of law, and denies to defendant the equal protection of the laws, in violation of the Fourteenth Amendment to the Federal Constitution.

9. That said court erred in upholding service of the writ upon the defendant on the faith of said Chapter 218, Laws of Minnesota 1913, (General Statutes 1913, paragraph 7735), and in affirming the entry of judgment against the defendant, for the reason that said judgment operates to place unreasonable conditions, burdens and restraints upon defendant's constitutional right to engage in interstate commerce, in violation of subdivision 3, Section 8, Article 1 (the Commerce Clause), of the Federal Constitution.

10. That said court erred in affirming the denial of defendant's motion to vacate and set aside the findings of fact and conclusion of law and to dismiss the action.

11. The rulings and holdings of said court in affirming the denial of defendant's various motions to dismiss and in affirming judgment against defendant were repugnant

to and in conflict with Section 206 of the Transportation Act, 1920.

12. The rulings and holdings of said court in affirming the denial of defendant's various motions to dismiss and in affirming judgment against defendant were repugnant to and in conflict with Article 1, Section 8, subdivision 3, of the Constitution of the United States, and also the Fourteenth Amendment to said Constitution, and denied to defendant rights, privileges and immunities thereby guaranteed.

BRIEF OF ARGUMENT.

I.

WHAT THE SUPREME COURT OF MINNESOTA MEANT BY SAYING THAT THE QUESTION IN THIS CASE NEVER HAD BEEN PASSED UPON BY THE SUPREME COURT OF THE UNITED STATES.

The concluding sentence of the decision of the Supreme Court of Minnesota in this case reads:

> "We recognize that the final decision of this question rests with the Supreme Court of the United States, but, as we read its decisions, that court has not yet determined the question and, until it does, we feel constrained to follow our previous rulings."

To ascertain the exact meaning of this sentence, it is necessary to examine the former Minnesota decisions cited.

In *Armstrong* v. *N. Y. C. Ry. Co.* 129 Minn. 104, 151 N. W. 917, the court for the first time considered the effect of the statute involved in this case, being Section 7735 of Minnesota General Statutes of 1913, which provides:

> "That any foreign corporation having an agent in this State for the solicitation of freight and passenger traffic or either thereof over its lines outside of this State, may be served with summons by delivering a copy thereof to such agent."

Service was there made upon a soliciting agent, and the cause of action arose outside of the state, but was based upon a shipment said to have been solicited by the agent on whom service was made.

The court said that the statute in explicit terms authorized the service and that the question in the case

was whether such a statute was unconstitutional. In holding that it was not, the court said:

> "Defendant relies upon the case of *Green* v. *C. B. & Q. Ry. Co.* 205 U. S. 530, 27 Sup. Ct. 595, 51 L. Ed. 916. It must be conceded that the facts in that case were much like those in the case at bar. The court held that doing business which was 'nothing more than solicitation' does not constitute 'doing business' so as to bring the defendant within the federal district, so that process of the United States courts of that district can be served upon it. In a later case it was said the decision in the Green Case was an 'extreme case' (*International Harvester* v. *Kentucky*, 234 U. S. 579, 586, 34 Sup. Ct. 944, 946 [58 L. Ed. 1479]), but it has never been overruled. However, in the Green Case the Roller Case (100 Fed. 738, 41 C. C. A. 22) is cited, and it is distinguished, but in no sense discredited or overruled. Speaking of the Roller Case the court said (205 U. S. 533, 27 Sup. Ct. 596, 51 L. Ed. 916): *'The action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of the state courts.' The same observation applies to this case, and, whatever may be said of the similarity between the agency in this case and that in the Green Case, we feel warranted in accepting the distinction made in the Green Case and in following the Roller Case, the authority of which is not questioned.* * * *
>
> *We find no decision anywhere holding that, where a state statute expressly designates an agent with the powers possessed by Ballard in this case as a proper agent on whom to serve process, that service of process on such an agent is not due process of law.*"

Lagergren v. *Penn. Ry. Co.* 130 Minn. 35, 152 N. W. 1102, was simply a *per curiam* decision based on the *Armstrong* case.

In *Rishmiller* v. *D. & R. G. Ry. Co.* 134 Minn. 261, 159 N. W. 272, the cause of action arose wholly outside the state and had no connection with the business solicited

therein. In holding that the statute applied to such a case the court said:

> "This case differs from the Armstrong case only in the fact that the cause of action pleaded here arose out of the state. In the Armstrong case the fact that the cause of action arose out of business transacted in the state was referred to, but we do not regard that fact as of controlling importance. The statute is broad enough to authorize service upon such an agent in a case where the cause of action did not arise in the state, and we cannot hold the statute void."

In *Merchants Elevator Co.* v. *C. & O. Ry. Co.* 147 Minn. 188, 179 N. W. 734, the court said:

> "Our statute expressly provides that our courts may acquire jurisdiction over a foreign railway company, having an agent in this state for the solicitation of freight or passenger traffic over its lines outside of this state, by service on such agent. G. S. 1913, Sec. 7735. The cases cited by defendant do not consider the effect of such a statute, and the Green case intimates that the rule there applied, in a case involving the jurisdiction of a federal court, might not apply in a case involving the jurisdiction of a state court under a state statute."

The court reiterated its opinion in *Callahan* v. *Union Pac. Ry. Co.* 182 N. W. 1004, where the following language was used:

> "Whether maintaining an agent in a state for the solicitation of freight and passenger traffic over a railroad wholly outside the state is such a doing of business in the state as to enable the state to subject a foreign railway corporation to the jurisdiction of its courts is not free from doubt. The final determination of the question rests with the Supreme Court of the United States, and we do not understand that that court has yet decided it. Although recognizing the question as a close one, this court has upheld the statute and sustained the validity of the service upon such an agent in the cases cited. These decisions have established the rule for this state until it shall be definitely and finally determined by the federal court."

The position of the Supreme Court of Minnesota may, therefore, be stated briefly to be as follows:

1. Although service on a soliciting agent under the facts of the case at bar would not be due process of law were it not for the statute here in question, yet because of said statute such service and judgment do afford due process of law.

2. That to prohibit foreign railroad corporations from soliciting interstate commerce in Minnesota except upon the onerous condition that they shall be subject to suit on causes of action not arising in the state, while other foreign corporations are not so burdened in the solicitation of interstate commerce, affords railroad corporations the equal protection of the laws prescribed by the Fourteenth Amendment.

3. That the conditions imposed by said statute are not an unlawful burden upon and interference with interstate commerce, contrary to the Commerce Clause of the Federal Constitution.

Upon each of these propositions we think the Supreme Court of Minnesota was in error, as we shall endeavor to show.

II.

THE SANTA FE WAS NOT DOING BUSINESS IN MINNESOTA IN SUCH MANNER OR TO SUCH EXTENT AS TO SUBJECT IT TO BE SUED THERE AND, THEREFORE, THE SERVICE WAS NOT AUTHORIZED BY SECTION 206 OF THE TRANSPORTATION ACT. THE MINNESOTA STATUTE AS APPLIED TO THIS CASE IS IN CONFLICT WITH AND REPUGNANT TO THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

As above stated, Section 206 of the Transportation Act provides that in suits brought against the agent

designated by the President process may be served upon any agent or officer of a carrier, which, after federal control, operates the railroad out of the operation of which, during federal control, the cause of action arose, if a contract has been made with such carrier for the conduct of litigation, providing such agent or officer could have been served had the suit been brought against the carrier instead of the federal agent.

Such a contract was entered into with the Santa Fe. Unless, therefore, process could have been served on Jansen had this suit been brought against the Santa Fe there is no authority in law for serving him in a suit brought against the Director General on a cause of action arising out of federal operation of the railroad of the Santa Fe.

The evidence showed and the trial court found that the only business done by the Santa Fe in Minnesota was "soliciting and obtaining interstate freight and passenger traffic" (Trans. 26, fol. 49), and the Supreme Court of Minnesota said in its opinion (Trans. 32):

> "The railway company neither owns nor operates any line of railway in this state, but maintains in this state an agent for the solicitation of freight and passenger traffic over its lines outside of this state. It does no business in this state except to maintain such resident agent and solicit such traffic."

At the outset, for the purpose of argument, we concede that in all states in which a railroad corporation runs and operates a railroad it may be sued, if the state statutes authorize such suit, on any transitory cause of action, because in such states the corporation is transacting the business which was the prime purpose of its incorporation, and is doing business in such manner and to such an extent as to plainly manifest its presence there.

But where a corporation enters into the state not for the purpose of carrying on the main business for which it was chartered but simply for the purpose of carrying on some collateral and incidental business, such as solicitation of interstate traffic for transportation wholly without the state, that is in no true sense carrying on business so as to subject the corporation to suit, particularly on causes of action arising outside the state, in favor of nonresidents, and having no connection whatever with the business so solicited.

It is settled that if a corporation is not doing business in a state, it cannot be sued there, even though its officers or agents reside or are found in that state, notwithstanding the fact that the state statute authorizes service upon them.

This is well illustrated by the case of *Peterson* v. *C. R. I. & P. R. R.*, 205 U. S. 364, where service was attempted under certain Texas statutes to recover for the death of an engineer of the defendant which occurred in Indian Territory. In sustaining an order quashing service the court said (p. 393):

> "Nor do we think that the persons served with process are agents of the Pacific Company doing the business of the company in Texas. Section 2 of the Act of March 13, 1905, Laws of Texas, 1905, p. 30, is very broad, and would seem to comprehend conductors who handle trains for two or more corporations over foreign or domestic roads across the state lines of Texas and on the track of a domestic railroad within the State of Texas, or upon any agent who has an office in Texas and who sells tickets or makes contracts for the transportation of passengers or property over any line of railroad or part thereof, of any such foreign corporation or company; and such companies and agents by Section 3 of the act are made agents of the foreign corporation or company, upon whom the citation may be served. But it is essential to the validity of such

service that the corporation shall be doing business within the state, and that the service be upon an agent representing the corporation with respect to such business, *Goldie* v. *Morning News,* 156 U. S. *ubi supra; Conley* v. *Mathieson Alkali Co.,* 190 U. S. *ubi supra.*

The conductors, one of whom was served, when he crossed the Texas line, this record shows, became the servant and agent of the Gulf Company. The ticket agent sold tickets for the Gulf Company, in whose employment he was. He would also sell tickets good upon its line, and over the lines of the Pacific Company, but he transacted this business as the agent of the Gulf Company. As to Hovey, the record fails to show that he was agent of the Pacific Company; on the contrary, it shows that he had no connection with the company, and that his duties were confined to the affairs of the Gulf Company. The same is true of Merrell; and as to Sebree, the record shows that for the services rendered as trainmaster he was paid by each company for the service performed for it and had no charge as agent of the business of the Pacific Company in the State of Texas.

We reach the conclusion that the Pacific Company was not doing business in the State of Texas and that the attempted service was not upon agents of that company transacting its business in that state in such a sense as to give jurisdiction by service of citation upon them. The judgment of the Circuit Court is affirmed."

In this case it will be noted that the state attempted by statute to provide that if a foreign line of railroad permitted tickets to be sold in the state good over its line then the agent selling such ticket should be held to be the agent of the corporation on whom service of process might be made, but the court held that that was not doing business in the state and a state statute could not make it so.

The case of *Green* v. *C. B. & Q.,* 205 U. S. 530, clearly holds that activities such as that of the soliciting agent

of the Santa Fe in this case do not constitute doing business within a state. The duties of the agent on whom service was made in the *Green case* are stated by the court as follows, beginning on page 532:

> "The eastern point of the defendant's line of railroad was at Chicago, whence its tracks extended westward. The business for which it was incorporated was the carriage of freight and passengers, and the construction, maintenance and operation of a railroad for that purpose. As incidental and collateral to that business it was proper, and, according to the business methods generally pursued, probably essential, that freight and passenger traffic should be solicited in other parts of the country than those through which the defendant's tracks ran. For the purpose of conducting this incidental business the defendant employed Mr. Heller, hired an office for him in Philadelphia, designated him as district freight and passenger agent, and in many ways advertised to the public these facts. The business of the agent was to solicit and procure passengers and freight to be transported over the defendant's line. For conducting this business several clerks and various traveling passenger and freight agents were employed, who reported to the agent and acted under his direction. He sold no tickets and received no payments for transportation of freight. When a prospective passenger desired a ticket, and applied to the agent for one, the agent took the applicant's money and procured from one of the railroads running west from Philadelphia a ticket for Chicago and a prepaid order, which gave to the applicant, upon his arrival at Chicago, the right to receive from the Chicago, Burlington and Quincy Railroad a ticket over that road. Occasionally he sold to railroad employees, who already had tickets over intermediate lines, orders for reduced rates over the defendant's lines. In some cases, for the convenience of shippers who had received bills of lading from the initial line for goods routed over the defendant's lines, he gave in exchange therefor bills of lading over the defendant's line. In these

bills of lading it was recited that they should not be in force until the freight had been actually received by the defendant."

While it is true in that case a state statute authorizing service on soliciting agents was not involved yet that case is full authority to the effect that the Santa Fe was not doing business in Minnesota, while the case of *Peterson* v. *C. R. I. & P. Ry. Co., supra,* and other decisions hereinafter cited, conclusively show that neither a state statute nor a decision of the highest court of the state as to what constitutes doing business in a state can affect the power or control the action of this Court, which always has reserved unto itself the right in any particular case to decide whether the activities carried on by a foreign corporation in any state constitute doing business in such manner as to render the corporation liable to be sued.

In *International Harvester Co.* v. *Kentucky,* 234 U. S. 579, which was decided on writ of error from the Court of Appeals of Kentucky, there was a statute providing for service on various officers and employees of a foreign corporation. The attorneys for the International Harvester Company conceded that whether or not this statute in regard to service had been complied with was a question for the Kentucky courts to determine and the question decided by this court was, as is said on page 583, whether under the circumstances shown in the case the Harvester Company was carrying on business in the State of Kentucky in such manner as to justify the state court in taking jurisdiction of complaints against it.

So, in the case at bar, the ultimate question and the real question involved is whether or not the Santa Fe was carrying on business in Minnesota. If the Harvester Company had not been carrying on business in

Kentucky then, of course, the decision would have been otherwise, and if the Santa Fe was not carrying on business in Minnesota, then the lower court was wrong and its judgment should be reversed, regardless of any statute.

In the *International Harvester* case, it appeared that the company was doing a volume of interstate business consisting of selling harvesting machines and getting the money for them. This was one of the main purposes for which the company was incorporated. The suit was brought in connection with a transaction or series of transactions alleged to have occurred in Kentucky.

In *Philadelphia & Reading* v. *McKibbin*, 243 U. S. 264, suit was brought in New York to recover damages for personal injuries sustained by a citizen and resident of New York while employed by the defendant in one of its New Jersey freight yards and the summons was served on the defendant's president in New York. The defendant appeared and moved to quash service upon the ground that it was not doing business within New York. After the motion was overruled, the defendant again raised the jurisdictional question in its answer and insisted upon it at the trial. From a verdict for the plaintiff the case was taken to the Supreme Court on a writ of error.

In that case it appeared that other roads sold in New York coupon tickets good over defendant's line outside the state, and that the defendant's name appeared in the telephone directory and at various places on a ferry terminal. In reversing the judgment of the lower court, Mr. Justice Brandeis said (pp. 267-8):

> *"These signs on the terminal, this insertion in the telephone directory, and the information given in response to enquiries at the ticket office or over the*

telephone are all designed to facilitate and encourage travel and for the convenience of the public. * * *

The finding that the defendant was doing business within the State of New York is disproved by the facts thus established. The defendant transacts no business there; nor is any business transacted there on its behalf, except in the sale of coupon tickets. Obviously the sale by a local carrier of through tickets does not involve a doing of business within the state by each of the connecting carriers. If it did, nearly every railroad company in the country would be 'doing business' in every state. Even hiring an office, the employment by a foreign railroad of a 'district freight and passenger agent * * * to solicit and procure passengers and freight to be transported over the defendant's line,' and having under his direction 'several clerks and various traveling passenger and freight agents' was held not to constitute 'doing business within the state.' *Green* v. *Chicago, Burlington & Quincy Ry. Co.*, 205 U. S. 530." (Italics ours.)

In *People's Tobacco Company* v. *American Tobacco Company*, 246 U. S. 79, the question of service again was involved and among other things it was found by the District Court that at the time of the service, and thereafter, the American Tobacco Company was selling goods in Louisiana to jobbers, and sending its drummers into that state to solicit orders of the retail trade, to be turned over to the jobbers, the charges being made by the jobbers to the retailers.

In holding that the American Tobacco Company was not doing business in Louisiana, the court said:

"The question as to what constitutes the doing of business in such wise as to make the corporation subject to service of process has been frequently discussed in the opinions of this court, and we shall enter upon no amplification of what has been said. Each case depends upon its own facts. The general rule deducible from all our decisions is that the

> business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the state or district where service is attempted. * * *
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> As to the continued practice of advertising its wares in Louisiana, and sending its soliciting agents into that state, as above detailed, the agents having no authority beyond solicitation, we think the previous decisions of this court have settled the law to be that such practices did not amount to that doing of business which subjects the corporation to the local jurisdiction for the purpose of service of process upon it. *Green* v. *Chicago, Burlington & Quincy Ry. Co.*, 205 U. S. 530; *Philadelphia & Reading Ry. Co.* v. *McKibben*, 243 U. S. 264, 268."

The court also took occasion to explain, limit and define its decision in the *International Harvester Company* case, saying on page 87:

> "The plaintiff in error relies upon *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, but in that case the facts disclosed that there was not only a continuous course of business in the solicitation of orders within the state, but there was also authority upon the part of such agents to receive payment in money, checks and drafts on behalf of the company, and to take notes payable and collectible at banks in Kentucky; these things, taken together, we held amounted to doing business within the State of Kentucky in such manner as to make the Harvester Company amenable to the process of the courts of that state."

In *Toledo Railways, etc. Co.* v. *Hill*, 244 U. S. 49, suit was brought in the Supreme Court of New York to recover the principal and interest of certain bonds issued by the railway company, an Ohio corporation, engaged in the operation of street railways and furnishing electrical energy at Toledo. Service was made upon a director and vice president of the corporation, who resided in New York. A motion to vacate and set aside the serv-

ice was made on the ground that the company was not doing business in New York. After this motion was overruled an answer was filed, reasserting the challenge as to jurisdiction and setting up various defenses to the merits, and the case was taken by writ of error to the Supreme Court of the United States from an adverse judgment against the railway company. Judgment was entered in favor of plaintiff on the theory that the provision for the payment of the bonds and coupons at an office in the City of New York constituted doing business there. In reversing the judgment, the Court said, on page 53:

> "The mere provision for a place of payment in the City of New York of the bonds and the coupons annexed to them at their maturity and their payment at such place *was in no true sense the carrying on by the corporation in New York of the business which it was chartered to carry on*, however much it may have been an agreement by the corporation to pay in New York an obligation resulting from the carrying on by it of its business in the State of Ohio."

In the case of *Atchison, T. & S. F. Ry. Co.* v. *Weeks et al.* (C. C. A. 5th Circuit), 254 Fed. 513, the Santa Fe was held not to be doing business in Texas although it maintained a general manager with an office there, who directed the operation of the western lines of the Santa Fe outside of the State of Texas by letters and telegrams sent to them. He was also the chief operating officer of a Texas corporation.

A bill to restrain the enforcement of a judgment obtained in a state court, upon service made under the Texas statutes referred to in the *Peterson* case, *supra*, was sustained.

The decision is strongly expressed, and the following quotations therefrom are pertinent here:

> "The doing of business which is entirely incidental to the main business, especially if it be interstate in its character, will not evidence an intention of the corporation to subject itself to the local laws. This may extend even to the maintenance of offices within the state, and the employment of such clerical help as may be necessary, without having such effect. *Green* v. *C. B. & Q. Ry. Co.* 205 U. S. 530, 27 Sup. Ct. 595, 51 L. Ed. 916.
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> The employment and payment of clerks at Amarillo could have no effect not resulting from the employment and payment of officers. In the cases of *Green* v. *C. B. & Q. Ry. Co.* and *People's Tobacco Co.* v. *American Tobacco Co.* there were local employees and clerks hired and paid, and who worked within the state.
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> There are no facts evidencing an intention on the part of the railway company to subject itself to suit within the State of Texas on a cause of action arising outside the state, or with reference to any matter or thing other than the conduct of its offices at Amarillo. There is no fact evidencing an intention on the part of the railway company to transfer its citizenship and its corporate existence from the state of its incorporation to the State of Texas.
>
> The conclusion is reached that, where a corporation is not undertaking to do within the state any of those things which it is incorporated to do, the only business done within the state being by managers who give direction for the operation of the business of the corporation in other states, using only the necessary clerical force to that end, and utilizing the United States mails and interstate transportation in the conveyance of directions, the corporation is not to be regarded as doing that character of business which would be equivalent to the presence within the state of the corporation, and which would be the essential basis for a personal judgment against the corporation within the state for a tort committed in another state."

Petition for certiorari in this case was denied, 249 U. S. 602.

As we understand its decisions, the Supreme Court of Minnesota has practically conceded that the various foreign railroad corporations which have been sued were not doing business in such manner and to such extent as to give the court jurisdiction had it not been for the statute authorizing service on soliciting agents.

We desire to call the special attention of the court to the case of *Stephan* v. *Union Pacific Railway Company*, 275 Fed. 709, decided August, 1921, by Judge Booth of the District Court of the District of Minnesota, in which the court arrived at the conclusion that the Minnesota statute did not authorize service upon a soliciting agent.

In that case the motion to quash service was on the following grounds:

> "(1) That at the time of the pretended service of the summons and complaint herein the defendant was a foreign corporation and did not operate any railroad in the State of Minnesota, or have any lines of railroad whatsoever therein.
>
> (2) That E. W. Hawley, upon whom the pretended service of the summons and complaint herein was made, was not a ticket or freight agent of said defendant, but was engaged solely in soliciting freight and traffic for transportation in interstate commerce over the lines of said defendant, which are wholly without the State of Minensota.
>
> (3) That Chapter 218, Laws Minn. 1913, (G. S. 1913, Sec. 7735), under which the pretended service was made, is void, and is (a) in contravention of Article 1, Sec. 7, of the Constitution of the State of Minnesota; (b) in contravention of Article 1, Sec. 8, subd. 3, of the Constitution of the United States; (c) in contravention of Article 14, Sec. 1, Amendments to the Constitution of the United States."

In granting the motion the court said (pp. 711, 712):

"It appears from the record in the case at bar that the defendant railway company has no line of railway in the State of Minnesota, and operates no line therein; that the cause of action did not arise in the State of Minnesota. It appears, further, that Hawley, upon whom the alleged service was made, was a soliciting freight and passenger agent, having an office in the City of Minneapolis; that his duties were to solicit freight and passenger traffic over the lines of the defendant railway company, and as incidental to such solicitation that he quoted rates established by the Interstate Commerce Commission, and received directions for diverting shipments in transit, and transmitted such directions to officers outside of the state; that he collected no freight charges, issued no bills of lading, and issued no passenger tickets; that on request he procured passenger tickets involving transportation partly over the Union Pacific lines from local ticket offices, turning the money received from the prospective passenger over to the local ticket office issuing the ticket; that he was authorized to do no other business than such as mentioned above, and does no other business, and that the defendant transacts no other business in the state.

It appeared, further, that in the city directory of the City of Minneapolis appears the following advertisement:

> '*Union Pacific System.* Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon-Washington Railroad & Navigation Company, St. Joseph & Grand Island Railway Company—Traffic Dept. Gen. Agent's Office, 618 Met. Life Bldg. Tel. Main 9456.'

And that in the telephone directory of the City of Minneapolis appears the following advertisement:

> '*Union Pacific System.* General Agent—freight and passenger dept. 618 Met. Life. Bldg. Main 9456.'

And that in the time-tables issued by the defendant company appears the following advertisement:

> '*Representatives of the Traffic Department,*

> Minneapolis, Minnesota.—618 Met. Life Bldg., 135 So. Third St.—E. H. Hawley, General Agent. R. E. Drummy, Traveling Freight and Passenger Agent. Wm. H. Brennan, Traveling Freight and Passenger Agent.'

As stated by the Supreme Court, each case must stand upon its own facts. After consideration of all the facts disclosed by the record in the instant case, I have reached the conclusion that they are more nearly similar to the facts in *Green* v. *Railway Co., supra,* than to the facts disclosed in any of the other cases. As was said by the court in that case:

> 'The business shown in this case was in substance nothing more than that of solicitation.'

In my judgment the case is controlled by the decision in the Green Case. It may be urged that the case at bar should be distinguished from the Green Case by reason of the fact that a state statute is one of the elements in the present controversy, and that this element was absent in the Green Case. In my judgment this fact is not sufficient to distinguish it from the decision in that case. *West* v. *Railway Co.* (C. C.) 170 Fed. 349, 355.

Further, the Minnesota statute does not attempt to define 'doing business within the state,' but simply designates the agent upon whom service may be made. The question whether the corporation is 'doing business within the state' still remains to be determined in each case upon the facts therein appearing."

We think we have clearly shown that the statute can have no effect at all in the case of a railroad company unless it is doing business of such character and to such extent as to warrant the inference that it has subjected itself to the jurisdiction of the court. It is not until that fact appears that a statute providing for service of process on any named officer or agent can be of any effect, and the question whether or not the designated officer or agent actually resides in the state is of no consequence whatever.

That this is so likewise appears from the case of *St. Louis Southwestern Railway Company of Texas* v. *Alexander*, 227 U. S. 218, in which were considered various statutes regarding service therein referred to. But the court held that before the question of service could be considered the following question must be determined:

> "Was the corporation within the jurisdiction in which it is sued?"

The court also said (pp. 226, 227):

> "A long line of decisions in this court has established that in order to render a corporation amenable to service of process in a foreign jurisdiction it must appear that the corporation is transacting business in that district to such an extent as to subject it to the jurisdiction and laws thereof.
>
> * * * * *
>
> This court has decided each case of this character upon the facts brought before it and has laid down no all-embracing rule by which it may be determined what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction. In a general way it may be said that the business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served and in which it is bound to appear when a proper agent has been served with process."

III.

THE STATUTE AS CONSTRUED BY THE SUPREME COURT OF MINNESOTA ALSO VIOLATES THE FOURTEENTH AMENDMENT IN THAT IT AMOUNTS TO A DENIAL OF EQUAL PROTECTION OF THE LAWS.

As we understand the theory on which the service in this case was sustained it is that the ordinary foreign corporation, such as a mercantile or manufacturing com-

pany, can come into the state and solicit interstate commerce without being subject to suit at all because the United States Supreme Court has held that *soliciting* business does not constitute *doing* business and that the Fourteenth Amendment forbids starting suit by service on a solicitor; but that as to foreign railroad corporations, the statute in effect provides that *soliciting* business is *doing* business and a solicitor is a proper agent for the service of process, regardless of the Federal Constitution.

We think the mere statement of such a theory shows clearly and conclusively its fallacy, but if that theory be assumed to be correct, then the law provides that foreign railroad corporations can only solicit interstate commerce on penalty of being sued generally, while other foreign corporations can solicit interstate commerce without being sued at all.

As we shall hereafter show, a state is not free to prevent foreign corporations from soliciting interstate commerce within its borders and any legislation concerning the same must be within limitations fixed by the Constitution of the United States, one of which is that "no state shall * * * deny any person within its jurisdiction the equal protection of the laws."

Of course, the legislature has the right to classify, but, as was said by this court in *Gulf R. R. Co.* v. *Ellis*, 165 U. S. 151, 159:

> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed

to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness.' While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government."

The language of the court in *Direll* v. *Morris Heirs et al.* 89 Tenn. 500, 15 S. W. 87, also is appropriate:

"If the classification is made * * * for the purpose of subjecting a class to the burden of some special disability, duty or obligation, there must be some good and valid reason why that particular class should alone be subjected to the burden."

The foregoing cases are familiar and often cited, yet the reading of the fundamental rules therein laid down is always helpful in determining the question as to whether a statute affords the equal protection of the laws guaranteed by the Federal Constitution.

There are, of course, numerous cases holding that it is proper to pass laws relating to railroads solely when the railroads affected lie within the state enacting the law. But that is not the case here, and we are utterly unable to think of any distinction between inter-

state solicitation by foreign railroad corporations and interstate solicitation by foreign mercantile or manufacturing corporations. If it is desirable that a citizen of Kansas, having a grievance against a foreign railroad corporation on account of alleged neglect in the transportation of a Kansas intrastate shipment, can come to Minnesota and bring suit against the foreign railroad corporation by serving its soliciting agent in Minnesota, then why is it not also desirable that a dissatisfied Illinois customer of a Chicago mercantile or manufacturing corporation, which solicits interstate business in Minnesota, should be at liberty to bring suit in Minnesota and serve the Chicago company's solicitor?

Or, if it is of benefit to the state to have foreign railroad suits tried there, why would it not be of equal benefit to have foreign suits against other corporations tried in Minnesota?

We submit that no valid reason can be put forth in support of the position that the singling out of railroad corporations here attempted is either reasonable or just.

IV.

THE MINNESOTA STATUTE AS APPLIED TO THIS CASE IS VOID BECAUSE REPUGNANT TO THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION.

The law is well settled by a multitude of decisions that the state cannot impose any condition upon interstate commerce that materially or directly burdens that commerce. While, in a general way, a state may regulate or restrict the right of foreign corporations to engage in business within its limits, yet such power must be exercised within the limitations which the Constitution of the United States places upon state action.

In this connection the following language from *Sioux Remedy Co.* v. *Cope*, 235 U. S. 197, 203, is peculiarly appropriate:

> "One of these limitations is that before indicated arising from the commerce clause, whose operation, as this court has said, is such that a corporation authorized by the state of its creation to engage in interstate commerce 'may not be prevented by another state from coming into its limits for all the legitimate purposes of such commerce.' *Western Union Telegraph Co.* v. *Kansas*, 216 U. S. 1, 27. We think that when a corporation goes into a state other than that of its origin to collect, according to the usual or prevailing methods, the purchase price of merchandise which it has lawfully sold therein in interstate commerce, it is there for a legitimate purpose of such commerce, and that the state cannot consistently with the limitation arising from the commerce clause, obstruct or hamper the attainment of that purpose. If it were otherwise, the purpose of the Constitution to secure and maintain the freedom of commerce by whomsoever conducted could be largely thwarted by the states and the commerce itself seriously crippled."

In that case, it appeared that an Iowa corporation, under a written contract made in South Dakota had sold to a resident of South Dakota certain merchandise for the sum of $80, and the action was brought in a court in South Dakota to recover the purchase price. The state court there held that because the Iowa corporation had not complied with the Foreign Corporation Act of South Dakota it could not maintain suit. In reversing the judgment this Court, after stating the provisions of the state statute, said (pages 204-5):

> "It will be perceived that these are the conditions upon which many of the states permit foreign corporations to engage in business within their limits when no constitutional limitation is involved, that is, when the character of the business is such that the state is free to exclude such corporations or to ad-

mit them upon terms acceptable to it. But here the conditions are sought to be applied in a different way and to a different situation falling within the reach of the commerce clause. Out of this arises the question of their validity. We think the mere statement of the conditions shows that they have no natural or reasonable relation to the right to sue which they are intended to restrict. They have no bearing upon the merits or any question of procedure or costs, are not directed against any abusive use of judicial process, and are plainly onerous. The second one, respecting the appointment of a resident agent upon whom process may be served, is particularly burdensome, because, as the Supreme Court of the state has said, it requires the corporation to subject itself to the jurisdiction of the courts of the state in general as a prerequisite to suing in any of them; that is to say, it withholds the right to sue even in a single instance until the corporation renders itself amenable to suit in all the courts of the state by whosoever chooses to sue it there. If one state can impose such a condition others can, and in that way corporations engaged in interstate commerce can be subjected to great embarrassment and serious hazards in the enforcement of contractual rights directly arising out of and connected with such commerce. As applied to such rights we think the conditions are unreasonable and burdensome, and therefore in conflict with the commerce clause."

One of the questions, therefore, presented by the case at bar is whether or not the requirement made by the Minnesota statute, as construed by its highest court, that a foreign railroad corporation, whose lines are without the state, cannot solicit interstate commerce in Minnesota without being subject to suit on a cause of action having nothing to do with the business solicited in Minnesota, arising wholly in Kansas and in favor of a Kansas corporation, is an interference with and a burden upon interstate commerce.

It is well known that large railroad systems like the Santa Fe have agents who solicit business in practically every state in the Union and the effect of holding that the Santa Fe soliciting agent could be served with process in this case, would be, to use the language of the court, in the case of *Philadelphia and Reading Railroad Co.* v. *McKibben, supra,*

> "nearly every railroad in the country would be 'doing business' in every state."

Plainly this would be a "manifest inconvenience and hardship." *Simon* v. *Southern Ry. Co.* 236 U. S. 115, 130.

What constitutes interstate as distinguished from local business is well illustrated in the case of *Cheney Brothers Co.* v. *Massachusetts,* 246 U. S. 147, in which the validity of an excise tax law of Massachusetts, as applied to the activities of Cheney Brothers Company, was considered. The court said on page 153:

> "This is a Connecticut corporation whose general business is manufacturing and selling silk fabrics. It maintains in Boston a selling office with one office salesman and four other salesmen who travel through New England. The salesmen solicit and take orders, subject to approval by the home office in Connecticut, and it ships directly to the purchasers. No stock of goods is kept in the Boston office, but only samples used in soliciting and taking orders. Copies and records of orders are retained, but no bookkeeping is done, and the office makes no collections. The salesmen and the office rent are paid directly from Connecticut and the other expenses of the office are paid from a small deposit kept in Boston for the purpose. No other business is done in the state.
>
> We do not perceive anything in this that can be regarded as a local business as distinguished from interstate commerce. The maintenance of the Boston office and the display therein of a supply of samples are in furtherance of the company's interstate

> business and have no other purpose. * * * Nor is the situation changed by inferring, as the state court did, that orders from customers in Connecticut sometimes are taken by salesmen connected with the Boston office and, after transmission to and approval by the home office, are filled by shipments from the company's mill in Connecticut to such customers. In such cases it doubtless is true that the resulting sale is local to Connecticut, but the action of the Boston office in receiving the order and transmitting it to the home office partakes more of the nature of interstate intercourse than of business local to Massachusetts and affords no basis for an excise tax in that state. *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 106-107."

This case also illustrates the well known fact that it is not railroad companies alone that solicit interstate commerce.

That the statute in question actually has imposed hardships and inconvenience on the Santa Fe, the defendant herein, is shown by the affidavit filed in this case (Trans., 8), which recites that after the opening of the office of the soliciting agent of the Santa Fe at Minneapolis in March, 1920, and prior to June 22, 1920, summons was served upon said soliciting agent in eleven suits involving forty-nine shipments, and by the fact that to try said cases it would be necessary for the employees and train crews of the Santa Fe to leave their employment and go to Minneapolis.

From such a number of suits brought against a single railroad within so short a time, the burden imposed upon foreign railroads generally by the statute in question may readily be inferred.

The question involved in this case is one of vast importance to railroads and all other corporations carrying on interstate solicitation because, if the statute is good as

applied to railroads, manifestly, a similar statute applicable to all foreign corporations also would be valid.

The situation is well summed up by the Supreme Court of Washington in *Royce* v. *C. & N. W. Ry. Co.* 156 Pac. 16, where the court said (page 17):

> "Considering the multitude of corporations and that, unlike individuals, they can be served through agents, all courts have shrunk from a rule which would soon swamp home tribunals with foreign brawls. Nor have we any desire through the same rule to expose our own incorporated merchants and carriers on like service to suits in every other state. Undoubtedly the universal opinion that solicitors for nonresident railroads and commercial houses are not agents for local service arises from these two apprehensions, and it was also seen to be unfair, as well as injurious to interstate commerce, to subject such principals to suits in our more than 40 states, while the plaintiffs in most cases would be exposed to suit only at home."

The Supreme Court of Minnesota in *Rishmiller* v. *D. & R. G. R. Co.* 134 Minn. 161, 159 N. W. 272, said with reference to a similar situation, but without referring to the effect of the commerce clause, which apparently was not called to its attention:

> "We may concede the undesirability of litigating such a cause as this so far from the place where it arose. It seems to us, however, that the question is not one of jurisdiction and that relief must be sought from the legislature, and not from the courts."

But a state legislature has no power to finally decide what is desirable or undesirable with respect to interstate commerce. That is a question for decision by this Court and the unlawful burden placed upon the solicitation of interstate commerce by the Minnesota statute clearly makes it unconstitutional.

Conclusion.

Under the Constitution of the United States and the authoritative decisions of this Court upon the point involved in this case, we respectfully submit that the judgment of the Supreme Court of Minnesota herein should be reversed.

Respectfully submitted,

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WM. R. STANS
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Supreme Court of the United States.

OCTOBER TERM, 1921.

NO. 270

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT, &c., PLAINTIFF IN ERROR,

vs.

FARMERS CO-OPERATIVE EQUITY COMPANY.

BRIEF OF DEFENDANT IN ERROR.

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Supreme Court of the United States.

OCTOBER TERM, 1921.

NO. 749.

JAMES C. DAVIS, DIRECTOR GENERAL OF RAILROADS, AS AGENT, &c., PLAINTIFF IN ERROR,

vs.

FARMERS CO-OPERATIVE EQUITY COMPANY.

BRIEF OF DEFENDANT IN ERROR.

This brief is being prepared before the brief of plaintiff in error is filed, but as this case will be reached for argument earlier than expected, preparation of this brief cannot longer be delayed. To the extent we fail to correctly anticipate the arguments of the other side we shall supplement this brief on oral argument.

The salient facts in this case are few and it will be assumed that they will be fully and correctly set out in the statement of facts in the brief of plaintiff in error.

As the cause of action here arose during Federal control and as it appears from the special appearance made that service should be made in the manner prescribed in Section 206 (b) of the Transportation Act of 1920 (Rec. p. 5, fol. 9), which provides that process may be served upon such agent of the carrier as "is authorized by law to be served with process in proceedings brought against such carrier," the question

of the validity of the service of process should be decided just as if the cause of action did not arise during Federal control and the action were against the railroad company.

Carrier Was Present in Minnesota and Therefore By Legislative Enactment It Could Be Made Amenable to Service of Process in Minnesota.

If a corporation is present in a state, then, just as in the case of an individual present in a state, it can be made amenable to the service of process there. When a corporation is present in a state and upon what agent or representative service of process can be had, are matters that properly come within the legislative powers of the state, and the interpretation of the supreme court of the state of the state statute covering this subject is conclusive. The question of whether the service is valid is not limited to the question of whether what the corporation is doing in the state constitutes "doing business" under decisions which have passed upon the scope of this term where there was no such statute.

This is the distinction we would make between this case and the case of *Green v. Chicago, Burlington & Quincy Railway Co.*, 205 U. S. 530, 27 Sup. Ct. 595, assuming, for the moment, that the agent who was served here had no different or greater powers than those of the agent upon whom service was attempted to be made in that case. In that case this court stated that its decision did not overrule the case of *Denver and R. G. R. Co. v. Roller*, 100 Fed. 738, or *Tuchband v. Chicago & A. R. Co.*, (N. Y.), 22 N. E. 360, where there were statutes providing, as here, when service could be had on foreign railroad corporations and on what agents. In such cases this court said that validity of the service depended upon the interpretation of the state statute notwithstanding the fact that in each case the only business done by the carrier in the state

was by the agent served who merely solicited business. Even though this court held in the *Green case* that merely soliciting business is not "doing business," it is submitted that this court, in using the following language held that by statutory enactment as to when a corporation is present in a state service can be obtained on a foreign railroad which does nothing more than solicit business in the state:

> "It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers."

This Court, in the case of *New York L. E. and W. R. Co. v. Estill*, 147 U. S. 591, 13 Sup. Ct. 444, upheld the decisions of the Supreme Court of Missouri holding that service, under a Missouri statute, is good when had on a foreign railroad corportation which has only an office in the state. In the case just cited this court said:

> "It has been held by the courts of Missouri that a non-resident corporation, which has a business office and an agent in the state, is amenable to the jurisdiction of its courts. *McNichol v. Reporting Agency*, 74 Mo. 457. In that case it was held that service of a summons upon a non-resident corporation, having an office or doing business in Missouri, in the manner provided by the fourth subdivision of section 3489, Rev. St. 1879, has the effect of personal service, and gives the court jurisdiction to enter a general judgment, and that the legislature had power to pass an act authorizing service of legal process upon any non-resident corporation having an office or doing business within the state, by leaving the same with an agent of the corporation within the state and authorizing the rendition of a general judgment upon such service.
>
> Said Section 3489 provides that a summons shall be executed, except as otherwise provided by law, in any one of the six different methods specified in the section, the fourth of which reads as follows: 'Or, fourth, where defendant is a corporation or joint-stock company organized under the laws of any other state or country, and having an office or doing business in this state, by delivering a copy of

> the writ and petition to any officer or agent of such corporation or company, in charge of any office or place of business, or if it have no office or place of business, then to any officer, agent, or employe in any county where such service may be obtained.'
>
> In the case cited the court held that the effect of the enactment, in 1879, of the fourth subdivision of Section 3489 was to make all foreign corporations having an office and doing business in Missouri, or an agent or employe there, suable in precisely the same manner as any other defendant, by the delivery of a copy of the writ and petition, and that it must be presumed that the legislature intended that the ordinary consequences should attend such service. See, also, *Insurance Co. v. French*, 18 How. 404; *Railroad Co. v. Harris*, 12 Wall. 65; *Pacific Co. v. Denton*, 146 U. S. 202, 207, 13 Sup. Ct. Rep. 44; *Gibbs v. Insurance Co.*, 63 N. Y. 114; 2 Mor. Corp. Sec. 977."

This court, in the case of *Connecticut Mut. Life Ins. Co. v. Spartley*, 172 U. S. 602, 19 Sup. Ct. 308, upheld the validity of a Tennessee statute providing that any corporation that had any transaction with persons or concerning any property situated in the state, through any agency whatever acting for it within the state, should be held to be "doing business" within the meaning of an act to subject foreign corporations to suit in that state.

The test to be applied as to when a corporation is present in a state is found in the following language in *International Harvester Co. v. Kentucky*, 234 U. S. 579, 34 Sup. Ct. 944, 58 L. ed. 1479:

> "The presence of a corporation within a state necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the state."

If, as held in the case of *Denver & R. G. R. Co. v. Roller*, 100 Fed. 738, the character of the agent served is such that it may fairly be said that he represents the corporation and a

soliciting freight and passenger agent is of sufficient representative character to make it reasonably certain that the corporation will be notified of service upon him, then it must follow that if the business of soliciting is carried on by him in the state in behalf of the corporation, the corporation, by virtue thereof, is then present in the state.

When a corporation comes into a state it is well settled that the state may impose such conditions as it sees fit upon such corporation and that if it is provided that such a corporation shall be amenable to service of process in such state on certain kinds of agents, then the corporation upon coming into such state through such agents and there being represented by such agents is presumed to have consented to such service of process on such agents, (*Lafayette Insurance Co. v. French,* 18 How. 404, 15 Sup. Ct. 451; *Commercial Mut. Acci. Co. v. Davis,* 213 U. S. 245, 29 Sup. Ct. 445).

Thus are successfully met here the two requirements laid down by this court in the *Alexander case* in the following language:

> "In this class of cases, where it is undertaken to hold a corporation personally liable in a foreign jurisdiction, two questions ordinarily arise: The first, Was the corporation within the jurisdiction in which it is sued? the second, Was process duly served upon an authorized agent of the corporation?"

The Supreme Court of Minnesota, in interpreting the process statute here providing that service may be had on a foreign corporation whose lines do not extend into the state by serving in the state an agent there engaged in the solicitation of freight and passenger traffic for such corporation, (General Statutes 1913, Section 7735, Subdiv. 3), has repeatedly held that a corporation so engaged in the solicitation of such

traffic through such an agent is present in the state and that service on him is valid.

See:

This case reported in the court below in 150 Minn. p. 574, 186 N. W. 130;

W. J. Armstrong v. New York Central & Hartford R. Co., 129 Minn. 104, 151 N. W. 917;

Lagergren v. Pennsylvania R. Co., 130 Minn. 35, 152 N. W. 1102;

Rishmiller v. Denver & R. G. R. Co., 134 Minn. 261, 159 N. W. 272;

Merchants Elev. Co. v. Chesapeake & O. Ry. Co., 147 Minn. 188, 179 N. W. 734;

Callaghan v. U. P. R. Co., 148 Minn. 182, 182 N. W. 1004.

In *Merchants Elev. Co. v. Chesapeake R. Co., supra*, the Minnesota Supreme Court interpreted this statute here in question as follows:

> "Our statute expressly provides that our Court may acquire jurisdiction over a foreign railway company having an agent in this state for the solicitation of freight or passenger traffic over its lines outside of this state by service on such agent. G. S. 1913, Sec. 7735."

This construction by the Minnesota Supreme Court, under the decisions of this court, should be accepted as final.

Even though such service may not be good in a Federal court, where the *Green case* was instituted, it does not follow that it is not good in a state court under a statute like the one in question. In *Mechanical Appliance Co. v. Castleman*, 215 U. S. at p. 442, the court quoted with approval from *Goldey v. The Morning News*, 156 U. S. 518, to the effect that while service of mesne process from a court of a state may be valid by the legislative acts and judicial decisions of that state, yet upon removal of the case to the federal court it may be held by the latter court that such service has no validity.

Inasmuch as the term "doing business" has never been given an all-inclusive definition and courts have reached different conclusions on the subject, it follows that a state legisla-

ture should have the power to say when a corporation is within the boundaries of the state, and that the only limitation upon such power is that the legislative enactment in regard thereto shall not offend the natural sense of justice. Such power, subject only to such limitation, was recognized by this court in the case of *Commercial Mut. Acci. Co. v. Davis,* 213 U. S. 245, 29 Sup. Ct. 445, wherein this court said:

> "It was competent for the state, keeping within lawful bounds, to designate the agent upon whom process might be served. * * * The law of the state may designate an agent upon whom service may be made, if he be one sustaining such relation to the company that the state may designate him for that purpose, exercising legislative power within the lawful bounds of due process of law. This was held in effect in *Connecticut Mut. L. Ins. Co. v. Spratley,* 172 U. S. 602, 43 L. ed. 569, 19 Sup. Ct. Rep. 308."

That a corporation may be present in the state even though it is not doing business in the sense that it is required to take out a license, is pointedly shown in the case of *Tauza v. Susquehana Coal Co.,* (N. Y.) 115 N. E. 915, where a corporation maintained an office in New York under the direction of a sales agent and solicited orders which were subject to confirmation by the home office in Pennsylvania. The court held that while it was not necessary for the corporation to take out a license to carry on such business in New York, it was nevertheless present in New York and subject to the jurisdiction of the courts of that state. The court said:

> "But activities insufficient to make out the transaction of business, within the meaning of those statutes, (license statutes) may yet be sufficient to bring the corporation within the state so as to render it amenable to process. * * * We are to say, not whether the business is such that the corporation may be prevented from being here, but whether its business is such that it is here. If in fact it is here, if it is here, not occasionally or casually, but with a fair measure of permanence, and

> continuity, then, whether its business is interstate or local, it is within the jurisdiction of our courts. *International Harvester Co. v. Kentucky, supra,* at page 587 of 234 U. S., 34 Sup. Ct. 944, 58 L. ed. 1479."

In the advancement and ramifications in the world of business and commerce when a corporation is present in a state is not necessarily determined by whether the corporation has physical property in the state. When a railroad corporation comes into a state through its agent to solicit shipments over its lines which do not run into such state and such agent is given a definite portion of such state—here the entire state as well as portions of several others—as his territory in such solicitation through an office established in such state, and is permanently located in such office and daily solicits such business, and as means for, and as an inducement to, having shipments routed over the line of such railroad gives information in regard to tariffs, quotes rates, traces shipments, issues in the state exchange bills of lading for the shipments solicited, and forwards to headquarters such claims as might be presented in regard to shipments so solicited, without the rendering of which service such business would likely not be procured, then it certainly cannot be said that it is opposed to natural sense of justice for the state to provide by legislative enactment that a corporation, under such circumstances and so engaged, is present in the state. Such conducting of business is laying claim to territory within the state for the purpose of increasing the traffic of the railroad and building up a good will for the corporation in such state for the purpose of still further increasing such traffic and consequently its revenue. The continuity of such operations conducted through an office established within the state for such purpose where the shipping public can go to find such agent and give him such business, distinguishes the case from one where an agent who has no office in the state comes into the state occasionally to solicit such business.

Under the circumstances as here made to appear the carrier was present in Minnesota just as truly as a tailoring corporation whose headquarters are in a foreign state is engaged in business in Minnesota by virtue of having a branch office in the state engaged in the solicitation of orders for clothes which are manufactured outside the state. In the case just supposed it will readily be admitted that the presence of the corporation in the state is not affected by the fact that the corporation carries no stock of merchandise within the state and none of the workmanship incident to filling the orders is done in the state. The solicitation of such orders, taking of measurements and quoting prices through such branch office are sufficient to constitute "doing business." The establishment of a regular trade in that manner creates a "good will" in the state which is an asset and which is retained only through the continued maintenance of the office.

CARRIER WAS ENGAGED IN DOING BUSINESS UNDER THE DECISIONS OF THIS COURT AND OTHER COURTS.

We have assumed that on the facts this case is no broader than the *Green case*. However it is to be noted that the agent upon whom service was had here handled the matter of claims in the same way and to the same extent as the agent did in the case of *St. Louis, Southwestern Ry. Co. v. Alexander*, 227 U. S. 218, 33 Sup. Ct. 245, in which the service was upheld.

For the facts we may look to the testimony of this agent who was called as a witness at the trial by the Director General, and whose testimony is uncontradicted, and we are not limited to the findings of fact made by the court.

In *Reynolds v. Missouri, K. & T. Ry. Co.*, (Mass.) 113 N. E. 413, which was affirmed by this court (41 Sup. Ct. 446), the court said:

> "Most of these facts have been found by the superior court judge, but as only one witness testified

> and apparently the trial judge did not distrust his testimony in any respect, we have treated his testimony as true and included in this statement a few facts not stated in supporting his conclusion. See *Lindsey v. Bird,* 193 Mass. 200, 79 N. E. 263; *Harvey-Watts Co. v. Worcester Umbrella Co.,* 193 Mass. 138, 78 N. E. 886."

On the matter of handling claims and in referring to himself in regard thereto, this witness, E. L. Jansen, testified as follows:

> "We endeavor to give him (the shipper whose business is solicited) the best service we can on claims and everything we can to satisfy him in the railroad end of his work" (Rec., p. 20, f. 38). "He (the shipper) makes the claim on the Santa Fe, and sometimes sends the claim direct to our people in Topeka or Chicago, and sometimes gives it to me. I transmit it to the proper people in Chicago or Topeka as the case may be." (Rec., p. 21, f. 40).

That the agent in the *Alexander case* handled claims in the same way is shown by the following excerpt from the opinion in regard to the way the agent in that case handled the claim there in controversy:

> "Replies were received to all such letters (sent by claimant in regard to claim) acknowledging receipt, and showing the attention and investigation which the claim was receiving, and stating that all claims were handled by the general offices at either St. Louis or Tyler, Texas, and that the letters were being sent to the St. Louis office of the Missouri company, and that it was hoped a satisfactory reply from the St. Louis office would be received at an early date. One letter was forwarded to S. C. Johnson, auditor of the Missouri Company, Freight Claim Division, and general adjuster of all freight claims of the Cotton Belt Route, who replied that he would review the matter and write fully regarding the company's position."

Solely upon the ground that the agent's connection with the claim as shown in the above quotation was sufficient to constitute "doing business" this court upheld the service and we submit that the same conclusion should be reached here, particularly in view of the fact that the agent here also solicited freight and passenger traffic, which the agent in the *Alexander case* did not do.

This case also comes within the case of *Missouri, K. & T. Ry. Co. v. Reynolds,* 41 Sup. Ct. 446. It appears from the facts in that case as set out in the opinion of the Supreme Court of Massachusetts (113 N. E. 412), that, when analyzed, there is no substantial difference between the services performed by the agent there and the services performed by the agent here. Several kinds of service performed by the agent in the Massachusetts case may be eliminated from consideration on account of having no controlling importance He reserved seats and berths in Pullman cars for the convenience of the patrons of the railroad just as the agent here traced shipments and bought tickets for the convenience of those he solicited (Rec., p. 18, f. 34, p. 20, ff. 38 and 39, p. 21, f. 40). The fact that in that case the agent sold tickets to which were attached coupons good over the railroad that was sued has been held in itself not sufficient to constitute "doing business." That the agent there received a percentage of the money realized from the business secured instead of a salary certainly cannot change the character of the business transacted. That there he was furnished with a frank for telegraphing on railroad business is of no more importance than the fact that the agent here took such steps as necessary, which undoubtedly included sending telegrams, in tracing shipments (Rec., p. 18, f. 35). There the fact that in a few instances he issued prepaid orders for the transportation of passengers beginning at some point on the defendant's railway system, to be exchanged for a ticket to be delivered at the points indicated, to be honored by the railway company, was no more effective or broader in scope in transacting the

business solicited than the issuance by the agent here of an exchange bill of lading upon which was authorized and could be secured the delivery to the railroad without anything more of the property therein described (Rec., p. 18, f. 35). There the agent did only a local business for the railroad and merely as a side issue in the carrying on of another business in an office which was maintained by him at his expense, while here the agent's office was maintained by the carrier and his territory for soliciting business included all of the state of Minnesota, and practically all of the states of Iowa and North and South Dakota, and part of Wisconsin (Rec., p. 17, f. 33). The fact that in the Massachusetts case the agent received money for the prepaid orders for transportation is not a distinguishing fact in that here, on account of there being a lien for freight charges, there was no occasion for the collection of any of the freight charges. The fact that the transportation business was obtained by the agent here just as well with, as without, collecting the freight charges, should not prevent what he did coming within the term "doing business" if identically the same thing, accompanied by the collection of freight charges, would constitute "doing business." Getting the business is the main thing and the matter of collecting the charges is purely clerical in view of the carrier's lien.

The decision of the state Supreme Court in the *Reynolds case* upholding the validity of service was based solely upon the finding of the trial court that the agent was engaged in soliciting business in the state, and therefore was engaged in business within the meaning of the state statute, which finding as quoted in the opinion, is as follows:

> "Marsters (the agent) is held out by the defendant railway as an agent for it at Boston and * * * is doing the acts which St. 1913, C. 257, contemplates as constituting an engaging in or soliciting business in this commonwealth by a foreign corporation. I therefore find said defendant is engaging in business within this commonwealth."

This case also comes within the case of *International Harvester Company v. Kentucky*, 234 U. S. 589, 34 Sup. Ct. 944, where orders for machines were solicited in Kentucky, subject to the approval of the defendant in another state. The gist of the opinion in that case is contained in the following sentence:

> "Here was a continuous course of business in the solicitation of orders which were sent to another state, and in response to which the machines of the Harvester Company were delivered within the state of Kentucky. This was a course of business, not a single transaction."

While it does not appear in this case that any specific shipments that were solicited came into the state, yet it fully appears from the testimony of the agent, who testified that his territory covered the entire state, that he was authorized to, and if occasion arose, would, solicit shipments that would come into the state and which would reach the state over the line of the Santa Fe, so that, in consequence, as a direct result of his solicitation, freight would come into the state just as it came into the state of Kentucky on the orders solicited in the *International Harvester Company case.*

The fact that in that case the agent had authority to accept money had no bearing upon the main part of his service, namely, procuring the orders for the machines, as the company clearly could not have escaped the decision it was "doing business" by arranging for collection through a bank or through the mails, for illustration. Certainly the mere collection of money has never been held in itself sufficient to constitute "doing business." Moreover, as heretofore pointed out, if the nature of the business solicited here did not give occasion for the collection of the freight charges on account of the carrier's lien insuring the collection of charges upon the shipments reaching destination, the soliciting of such business is none the less "doing business" because no money is collected by the agent.

In the case of *Interocean Forwarding Co. v. McCormick Co.*, 168 N. Y. S. 177, the court held that a corporation was present in the state and "doing business" there by maintaining an office there for an agent who merely solicited inquiries or offers for the corporation to pass upon in another state.

To the same effect:

Bogert & Hopper v. Wilder Mfg. Co., 189 N. Y. S. 444;

Cochrane Box & Mfg. Co. v. Monroe Binder Board Co., 188 N. Y. S. 697.

STATE STATUTE IS NOT UNCONSTITUTIONAL ON GROUND THAT IT IMPOSES A BURDEN ON INTERSTATE COMMERCE.

Once concede that a state may provide for service of process on a corporation that is present in the state, and we have shown that a state may so provide, the validity of such a statute is not affected by the fact that because of such statute a burden is placed on interstate commerce.

In the case of *International Harvester Co. v. Kentucky, supra*, this court said:

> "True, it has been held time and again that a state cannot burden interstate commerce or pass laws which amount to the regulation of such commerce; but this is a long way from holding that the ordinary process of the courts may not reach corporations carrying on business within the state which is wholly of an interstate commerce character. Such corporations are within the state, receiving the protection of its laws, and may, and often do, have large properties located within the state. In *Davis v. Cleveland, C. C. & St. L. R. Co.*, 217 U. S. 157, 54 L. ed. 708, 27 L. R. A. (N. S.) 23, 30 Sup. Ct. Rep. 463, 18 Ann. Cas. 907, this court held that cars engaged in interstate commerce and credits due for interstate transportation are not immune from seizure under the laws of the state regulating garnishment and attachment because of their connection with interstate commerce, and it was recognized that the states may pass laws enforcing the

> rights of citizens which affect interstate commerce, but fall short of regulating such commerce in the sense in which the Constitution gives sole jurisdiction to Congress." (Citing cases.)

See also *Tauza v. Susquehana Coal Co.,* (N. Y.) 115 N. E. 915.

The validity of such a statute does not depend upon the policy which the state adopts as to what extent it will entertain in its courts transitory actions where the causes of action have arisen in other jurisdictions. (*Chambers v. B. & O. R. Co.,* 207 U. S. 142, 28 Sup. Ct. 34). Nor is it a matter of controlling importance that the sustaining of such a statute might be an incentive for the institution of actions in Minnesota which, if it were not for such a statute, might be brought in the states where the causes of action arose and where such cases could possibly be defended more easily and at less expense by the railroads. The argument as to drawing litigation to Minnesota, which will doubtless be relied upon by paintiff in error, was more appropriately advanced in attacking the constitutionality of the Carmack amendment which imposes upon the initial carrier the burden of defending actions on claims arising while shipments are in the hands of connecting carriers and in states where the initial carrier does not operate at all, and yet that argument was held by this court to be unsound. It is far more important that shippers in Minnesota whose shipments are solicited by agents of such foreign lines should have the privilege of suing such lines in this state than that such lines should be put to the least possible expense of defending claims by compelling the shippers to sue in the states where the claims originate.

It follows that if under this statute service can be obtained on such foreign carriers by residents of Minnesota, no line can be drawn between residents and non-residents and that this statute makes such foreign carriers amenable to process in actions regardless of the residence of the plaintiff and where

the cause of action arose. It has been so held by the Minnesota Supreme Court (*Rishmiller v. Denver & R. G. R. Co.*, 134 Minn. 261, 159 N. W. 272.

It is respectfully submitted that the judgment of the lower court should be affirmed.

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